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DIVISIONAL FOREST OFFICE
SOUTHERN CIRCLE.
WORKING PLANS PART II.

INCOME TAX.

PART I.—Liability or otherwise to the Tax.

1. Subject to the provision of clause (*j*) of Section 5 of the Income Tax Act all military pensioners are under Section 7 and Part I liable to payment of the tax on the amount of their pensions. (G. R. No. 720, dated 13th March 1886.)

2. The terms of Section 5 (1) (*a*) of the Income Tax Act include income from land of inámdárs who are not agriculturists if the land is used for agricultural purposes and local cess is paid on the rent or revenue derived from it by the inámdárs. (G. R. No. 914, dated 31st March 1886.)

3. Act II of 1886 does not extend to British subjects who reside in the dominions of Princes and States in India in alliance with Her Majesty, unless they are in the service of the Government of India or of a local authority established by the Governor General in Council. But the Governor General in Council has extended the Act to the civil and military station of Bangalore with certain modifications, and those employés of the Southern Marátha Railway Company who reside at Bangalore will have to pay the tax there. (L. R. No. 1364, dated 22nd October 1886; *vide* G. R. No. 3358, dated 4th November 1886.)

4. The salary or any portion of it received, while residing in British territory, by a Government servant whose services are lent to a Native State must be taxed under Part I of Schedule II of the Income Tax Act. (G. R. No. 3829, dated 13th December 1888.)

5. The office establishment of the Political Agent, Kolhápur and Southern Marátha Country, is paid by the British Government and consists of British subjects. The salaries of the men are, therefore, liable to the tax. It makes no difference in this liability that the State of Kolhápur contributes a yearly sum to Government which goes towards paying Agency charges, nor that these officials have lived for some time in a Native State: service of the Crown in a foreign country cannot divest a British subject of his nationality. (G. R. No. 571, dated 19th February 1887.)

6. The Personal Assistant to the Political Agent, Mahi Kántha, is liable to the payment of income tax. (G. R., P. D., No. 7744, dated 24th October 1891.)

7. The cost of board and lodging should not be taken into consideration in levying income tax from such servants of private employers whose actual pay is under Rs. 500 per annum, but who receive board and lodging. (G. R. No. 1123, dated 19th April 1886.)

8. Travelling and other allowances of the nature of those referred to in Section 3 (4) of the Act form part of an officer's emoluments and would be taxable under Part I, if at all. But they have been excluded from the definition of the term "Salary,"

and should not be taken into account either for the purpose of determining whether the income in any case is liable to the tax or for the purpose of determining the rate at which the tax should be levied.

Municipalities, Local Boards and other similar corporate bodies are designated by the term "Local Authority" in the Act, and there is nothing in any part of Schedule II to show that the funds of a Local Authority which are applicable to public uses are liable to the tax.

The whole income derived by a person residing in British India is liable to the tax, inclusive of any portion of it which he may derive from his dealings in foreign territory.

(G. R. No. 1167, dated 21st April 1886.)

9. Portuguese subjects and subjects of Native States in alliance with Her Majesty are not liable when serving Government out of British India to be taxed under Act II of 1886 on salaries paid out of British India. (G. R. No. 1197, dated 29th April 1886.)

10. There are no places in Cutch and Káthiáwár which may be regarded as being within British Indian territory for the purposes of income tax. (G. R. No. 484, dated 9th February 1895.)

11. The salaries of officers serving outside of British India whose services have been lent to and whose salaries are paid by Native States are not liable to income tax. (G. I., F. & C., No. 2650, dated 21st August 1886; *vide* G. R. No. 2721, dated 8th September 1886.)

12. The income received by inámdárs residing in British India on account of their holdings situated in Native States is liable to income tax. (G. R. No. 2804, dated 15th September 1886.)

13. The various allowances granted under the several Hill Allowance Codes are liable to or exempt from the tax according as they are granted to meet general or specific expenditure. According to this principle the education allowance under Section 23, the house-rent under Sections 24 to 28, and the value of free quarters under Section 36 of the Simla Allowance Code are granted to meet specific expenditure, and are exempt under the terms of Section 3 (4) of the Act. The special maintenance allowances under Sections 15 and 16, the family maintenance allowances under Sections 17 to 22, the deputation allowance under Sections 34 and 35, and the consolidated salary and the extra allowance of 15 per cent. under Section 36 of the Simla Allowance Code are granted to meet general and not specific expenditure, and are therefore not exempt. Similarly, the extra allowances under Part II D and F, and the charge allowance under Part III of the Darjeeling Allowance Code are not exempt.

Presidency allowances and the local allowance of the Accountant General, Bengal, are for the same

reason liable to the tax. Presidency house-rent, however, is exempt, as granted to meet specific expenditure.

Rewards for passing examinations are liable to the tax.

Scholarships, if granted to meet the cost of education, are exempt; otherwise they are liable.

(G. I., F. & C., No. 391, dated 26th April 1886; *vide* G. R. No. 1309, dated 11th May 1886.)

14. Salaries paid by Sub-Registrars to their kárkúns from percentages on fees should be excluded in caculating Sub-Registrars' incomes.

The income derived from interest on deposits in Savings Banks is liable to taxation under Part IV of Schedule II.

There is no reason why the incomes of prostitutes and dancing girls should not be taxed. It cannot be urged that taxing such professions is offering any encouragement to them as was argued under the License Tax Act.

Under the Income Tax Act of 1869 the Government of India, in letter No. 1397, dated 25th June 1869, ruled that the recipients of a personal income derived from property employed for or dedicated to religious or charitable public purposes should not be exempted from assessment. This ruling would hold good under the present Act, and accordingly the personal income of missionaries, Roman Catholic priests or religious mendicants derived from such sources is assessable. Provided the salaries are received in British India it is immaterial whether the funds from which they are paid exist in British India or not. Missionaries and Roman Catholic priests who receive no fixed salaries but whose actual expenses are paid by the Societies to which they belong are exempt from the operation of the Act.

(G. Rs. Nos. 1532, dated 31st May 1886, and 1846, dated 26th June 1886.)

15. A Sub-Registrar should be taxed on the receipts of every month in which they exceed Rs. 41-10-8 and exempted whenever he may have become entitled to less remuneration. At the end of the year he should be allowed to submit a return of his actual income from all sources, and obtain thereon a refund of the amount of tax paid, if he can show that his income has fallen below the minimum. (G. R. No. 1907, dated 2nd July 1886.)

16. Bonuses come under Section 7 of Act II of 1886 and are therefore liable to the tax. (G. I., F. & C., No. 1722, dated 8th July 1886; *vide* G. R. No. 1666, dated 24th idem.)

17. The income* derived from the Government securities granted in compensation of service inám

* In G. R., R. D., No. 9350, dated 11th December 1895, it has been ruled that in all cases of service inám land being appropriated for a public purpose the cash allowance should be in the form of interest on amount or estimated value of compensation

lands taken up for public purposes should be regarded as the income of the officiators among whom it is distributed, and as such is liable to assessment under Part III of Schedule II of the Income Tax Act, subject to the provisos laid down in that Part. (G. R. No. 2537, dated 23rd August 1886.)

18. The manufacture of salt cannot be termed a purely agricultural pursuit, and the mere fact that the salt-pans are assessed to the land revenue furnishes no sufficient claim to exemption from income tax of the revenue derived therefrom. (G. R. No. 2852, dated 20th September 1886.)

19. A capital sum paid in commutation of the whole or portion of a pension is not liable to income tax. (G. I., F. & C., No. 3920, dated 29th October 1886; *vide* G. R. No. 3454, dated 15th November 1886.)

20. The following opinion was recorded by the Advocate General, Bengal, on the question as to the liability to income tax of incomes derived by mortgagees from the mortgage of agricultural lands:—

"The first exception in Section 5 of Act II of 1886 (being sub-section (*a*)) shows that the rent for the land therein mentioned is exempted from income tax, and so far as the Government is concerned it is immaterial whether such rent is primarily received by one person, or more persons than one. A mortgagee holding any one of the following mortgages, namely, a simple mortgage, a mortgage by conditional sale, or an English mortgage of such land as is mentioned in sub-section (*a*) of Section 5, the mortgagor being in possession of the same does not clearly come within the exception provided by Section 5 (*a*) and is therefore not exempted from payment of income tax in respect of his income, which is the interest on money advanced by, or due to him, because he does not primarily receive the rent of the mortgaged property. That rent is received by the mortgagor and although the mortgagee is probably paid his interest out of such rent he need not be paid out of it, and may be paid his interest out of any other fund; and when he is paid his interest out of the rent collected by the mortgagor the payment to him so to speak, second-hand, that is, after the rent has been received by the mortgagor and has been exempted in his hands from payment of income tax.

"The case of a usufructuary mortgagee, or a mortgagee who has been put into possession of mortgaged lands, and is entitled to receive the rent in the first instance and to appropriate it towards the payment of his interest, stands on a different footing. The rent comes to him in the first instance and the rent itself being exempted from income tax in his hands the mortgagee is not liable to pay income tax on the rent, merely because he appropriates it to the payment of interest due to him.

"Mr. Rattigan thinks that no distinction exists between the two classes of cases, because he considers that the mortgagee in possession receives the rent as the agent of the mortgagor. This is a fallacy. The mortgagee in possession is not, in the eye of the law, the agent of the mortgagor; he has the position of an owner, as proprietor for the time being, a mortgage being the transfer of the mortgagor's interest for a specific purpose—*see* Section 58 of the 'Transfer of Property Act, 1882.' Although the mortgagee in possession is liable to

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paid for the land and should be calculated at the lowest rate of interest paid on Government paper at the time when the land was acquired.

account, he is neither a trustee nor agent of the mortgagor. The statutes of Limitation apply between the mortgagor and mortgagee in possession, and such would not be the case if the possession of the mortgagee was in the character of an agent or trustee.

"The opinion I have expressed applies equally to cases of mortgagees falling under Section 5 (*b*) (1) and 5 (*b*) (3), the distinction being observed between the cases in which the mortgagor and mortgagee respectively hold possession. The general question whether a mortgagee can claim exemption from income tax or not, must depend, the subject of the mortgage being agricultural land, on the circumstances of each individual case. I have sufficiently indicated in this opinion the principles applicable to the solution of that question."

(G. I., F. & C., No. 4219, dated 23rd November 1886; *vide* G. R. No. 3696, dated 7th December 1886.)

21. In such a case as that of a person owning a house in Bombay or Poona and occupying it nine months of the year, and also owning one at Mahábaleshvar and occupying it for three months of the year, the house at Mahábaleshvar is not exempt from assessment merely on the ground of its being inhabited only for a portion of the year. According to the practice in the United Kingdom such a building, as for instance a shooting-box on the moors or country and town residences, would be assessed under the Inhabited House Acts. (G. R. No. 1036, dated 21st April 1887.)

22. Toda girás allowances and khichri and salámi (assuming that these allowances are of the same nature as toda girás allowances) are 'pensions' within the meaning of Part I of the Second Schedule of the Income Tax Act and are not exempt from the tax under Section 5 (1) (*a*).

The nature of kothli sánth was discussed by the Chief Justice in the Naoli Sanad Case (I. L. R., 4 Bom., 385-7). It appears to be 'compensation on account of alienated land resumed by Government, for which a money payment is annually made to the original holder from the Government treasury.' It is, in fact, a cash allowance enjoyed in lieu of land. It is therefore a 'pension' within the meaning of Part I of the Second Schedule of the Act and is not exempt from the tax under Section 5 (1) (*a*).

Payments of these allowances, when made within a Native State in alliance with Her Majesty, fall under clause 2 of Part I of the Second Schedule of the Act. The words 'within the dominions of a Prince or State in alliance with Her Majesty' in clause 2 of Part I of the Second Schedule refer to the place of payment merely and not to the place where the payee resides. If a payment made in a Native State by Government or by a local authority established by Government is made 'to or on behalf of a British subject' it falls under this clause, wherever such British subject may be resident.

(L. R. Nos. 47, dated 7th January, and 194, dated 8th March 1887; *vide* G. R. No. 962, dated 12th April 1887.)

23. Allowances in the form of pensions, whether political, compassionate or charitable, cannot be exempted from the tax under Act II of 1886.

Allowances by way of compensation in respect of property situate, or rights exercised, in British India are ordinarily liable to the tax.

Allowances made to Chiefs under treaties in respect of or in compensation for payments which would have accrued to them in their Native States had not these treaties been made, will ordinarily be exempt from the tax.

If any specific case occurs regarding which the principles as above stated do not seem sufficient, or in which for whatever reason any doubt is entertained by the Government of Bombay, it should be referred to the Government of India in the Finance and Commerce Department.

(G. I., F. & C., No. 881, dated 3rd March 1887; *vide* G. R., P. D., No. 2290, dated 1st April 1887, and G. R. No. 1160, dated 6th May 1887.)

24. The monthly contribution paid by the Perim Coal Company for the expenses of administration rendered necessary by the establishment of the Company on the Island does not exempt them from liability to the tax under Act II of 1886. The net profits of the Company arising from their agency business in the Island are therefore chargeable to the tax. (G. Rs. Nos. 3091, dated 12th October 1886, and 1402, dated 6th June 1887.)

25. A question having been raised as to the liability to Indian income tax of the salary paid to guaranteed Railway employés on leave in England, first, when the money is paid into the treasury in India to cover payment in England, and, secondly, when the money is invested in a bill of exchange for remittance direct to the employé in England, it has been ruled that payments in either of the ways mentioned, so long as they are made in England, are not liable to Indian income tax. (G. R. No. 1714, dated 7th July 1887.)

26. Remittances which are the income of some one else beside the remitter are income 'received' in British India but not remittances made to *his agent* unless they are sent direct from the treasury and not previously *received* by the remitter in foreign territory.

A residing and drawing salary in Baroda remits part of it to his father B, who is the head of the family and lives in Ahmedabad. If the remittance is sent as a contribution from separate property to family funds it is, as stated in the opinion quoted in Government Resolution No. 1237 of 3rd May 1886, part of the family income received by the family in British territory and is liable to taxation —not as a portion of A's income but as the income of the family. If, on the other hand, A sends it to B merely as his agent for the purpose of investment or expenditure on A's account it cannot be treated

as income received in British India. A has already received it in Baroda and cannot be said to receive it a second time over on its reaching the hands of his agent at Ahmedabad. Supposing that instead of remitting the money to B, A carried it himself to Ahmedabad, could it be argued that it became income received by him in British India as soon as he crossed the frontier? If not, there seems no means of treating it as income if he sends it by *hundi* to his agent B. It cannot be said to be B's income, for it does not belong to him, nor is it income received by A in British India, as he has already received it in Baroda.

In some cases even it might be argued that A's remittances to B for the family funds were not income received by the family in British India as they belonged to the family and were received by it at Baroda as soon as they came into A's hands; but as a general rule, the salary and earnings of members of joint families living apart, not derived from family trade or from some profession requiring technical education paid for out of the family funds, are separate property, and as such when sent to the family funds at Ahmedabad are in the nature of a donation and can be treated as income received by the family in British India.

Therefore if the remittance is made to B as A's agent for investment or expenditure on A's account it is not liable to be taxed. If on the other hand it is sent to B as a donation to the family funds it is liable to be taxed. In most cases in which A holds an official appointment his contributions to the family funds may usually be treated as donations, but in cases in which he is carrying on at Baroda a branch of the family business the presumption would probably be the other way.

It should be remembered, however, that *prima facie* all money received by B at Ahmedabad should be treated as B's income and that it is for him to prove either that he is only an agent of A. or that the transaction is merely a transfer of money already belonging to the family at Baroda to its coffers at Ahmedabad.

On these principles the first and third of the following questions are answered in the negative; and the only answer that can be given to question No. 2 is that if the money remitted first came into the possession of the family as family property when it reached Ahmedabad it is liable to taxation:—

"1. A is a native of Ahmedabad and has his house here, but serves in Baroda, a Native State. None of his family members lives here permanently, but he or they come and stop for a few days for wedding or other ceremonies or on some business or to pass holidays. A sends or brings with him Rs. 2,000 here and invests it or sends that sum to Bombay and purchases a company's share or Government security. Is the Rs. 2,000 liable to the income tax?

"2. B is a member of an undivided Hindu family, and is serving in a foreign State. He is also a native of Ahmedabad, where his father is dealing in money and receiving rents. He defrays all the family expenses in Ahmedabad from these sources. B sends Rs. 5,000 from the savings of his salary to his father who uses that amount in his own trade. Is the Rs. 5,000 which is purely a contribution to the general purse liable to the tax?

"3. C is also a native of Ahmedabad and he is in the service of Bhúj Darbár for the past ten years. He kept his savings by him and when he came to Ahmedabad he brought with him at once Rs. 20,000. Out of this sum he spends Rs. 10,000 in building a house and invests the remaining sum. Will the whole sum, *viz.*, Rs. 20,000, be liable to the tax?"

(L. R. No. 809, dated 17th June 1887; *vide* G. R. No. 164, dated 2nd July 1887.)

27. Club subscriptions are exempt from income tax as they are not "income or profits accruing and arising or received in British India." But the argument is not applicable to club houses. Their value as a rule must be liable to taxation. They belong ordinarily to the members, and their letting value represents income which might be obtained by them if they thought proper to let them instead of using them themselves. (L. R. No. 1364, dated 11th October 1887; *vide* G. R. No. 2878, dated 24th idem.)

28. *Hunda* or *kanya vikri* paid (by the parents of the bride to the parents of the bridegroom) in cash is income of the recipient for the year in which the payment is made and as such is taxable under the Income Tax Act. (G. R. No. 2017, dated 13th July 1886.)

29. That part of *hunda* which is invested for the sole benefit of the bride being capital, only the income derived therefrom is taxable. (G. R. No. 2981, dated 5th November 1887.)

30. A marriage dower, paid in cash, need not be assessed to taxation under Act II of 1886. (G. I., F. & C., No. 2335, dated 6th June 1891; *vide* G. R. No. 2187, dated 20th idem.)

31. "Pallu," being money set apart by the parents of the bride or bridegroom, or of both, for the future benefit of the bride or of the married couple, is "property" rather than "income," and is not taxable under the Income Tax Act.

"Peherámni" and "Kanya Vikraya" are payments made by the bridegroom's father to the bride's father, and *vice versâ*, in consideration of the recipient's allowing the marriage. Such payments differ from ordinary gifts of money *inter vivos* in that they are not made without a consideration, but in respect of liability to assessment to the income tax

it seems to be difficult to distinguish them from such gifts. They fall within the same rule which, upon the Honourable the Advocate General's advice, Government has adopted with regard to gifts *inter vivos* generally. (G. R. No. 1672, dated 17th May 1890.)

The term "income" appears to be used in Act II of 1886 in the special sense in which it is commonly used as meaning "that gain which proceeds from labour, business or property of any kind" or "the annual receipts of a private person or a corporation from property" (Webster). The term, as thus defined, excludes not only additions to property but also receipts which are not derived from property or labour or business.

(L. R. No. 1334, dated 10th August 1891; *vide* G. R. No. 2925, dated 21st August 1891.)

32. The incomes of Missionaries are not exempt from income tax. (G. I., F. & C., No. 385, dated 27th January 1888; *vide* G. R. No. 494, dated 17th February 1888.)

33. A pension is not liable to taxation under Act II of 1886 so long as it is paid direct to a pensioner not resident in British India or to an agent who is also not resident in British India. This ruling does not apply to officers in the active service of Government who are paid their salaries outside the limits of British India. Such officers should be required to pay the tax leviable under the Act.* (G. I., F. & C., Nos. 2428, dated 15th May 1889, 6012, dated 31st December 1890, and S. R.-3418, dated 7th August 1893; *vide* G. R., M. D., No. 1789, dated 6th June 1889, G. R. No. 334, dated 29th January 1891, and G. R., P. D., No. 5116, dated 23rd August 1893.)

34. The test provided by the Income Tax Act as to the liability to the tax of sums belonging to a resident in British India, is not whether those sums belong to such resident, but whether they are income or profits accruing and arising or received in British India.

The Indian Legislature advisedly made income and profits liable not with reference solely to the residence of the person enjoying them, but with reference to the place where they accrue, arise or are received (Section 3, Sub-section 5, of Act II of 1886), and imposed a liability to income tax only on income and profits which reach the recipient under the protection of the British Law. No cause of action for rents and profits, &c., payable in a Native State could possibly arise or accrue in British Courts. Money which has been received in a Native State and has there been paid away into other hands without ever being brought into British

* All officers holding appointments under Government and serving in Somáli land as elsewhere out of British India are liable to the tax. (G. I., F. & C., No. S. R.-4877, dated 6th December 1892; *vide* G. Rs., P. D., Nos. 13, dated 3rd January 1893, and 2578, dated 20th April 1893.)

India at all cannot, by any reasonable strain of words, be said to have been received in British India.

The fact that a person resident in British India, has benefitted by the money, is quite immaterial. It has not satisfied the definition in the Income Tax Act as not having arisen, accrued or been received in British India. (L. R. No. 601, dated 7th June 1889; *vide* G. R. No. 2383, dated 19th idem.)

35. When the "final demand" has once been fixed, *i. e.*, after the petitions of appeal and petitions for revision allowed under the Act have been disposed of, the Commissioner is no longer concerned with questions of asserted non-liability to assessment: and the lists of irrecoverable balances should be confined to cases in which the *recovery* of the tax from the assessee is found impossible. Remarks in the lists to the effect that *non-liability* to payment is the cause of the failure to collect the tax lead to confusion and should not be entered. (G. R. No. 2877, dated 30th July 1889.)

36. In its Resolution No. 533, dated 15th February 1887, the Government of Bombay decided that those portions of the salaries of certain mechanics employed in cotton mills in Ahmedabad which under agreement were paid by their employers in England, were liable to taxation under Act II of 1886 (Part IV of the Second Schedule).

In January 1888, the Chief Commissioner of Assam asked whether commissions earned by managers and assistants of tea concerns in India, but paid in England and not remitted to India, were liable to income tax.

In September 1889, the Chief Commissioner of Burma transmitted for orders representations made on behalf of certain members of the American Baptist Mission and the employés of the Irrawaddy Flotilla Company, praying to be exempted from the taxation of such portion of their income as was not paid in British India. In the case of the Missionaries, it was contended that their income or salary was derived from donations in the United States, and that the portion of it paid in that country never reached India. In the case of the employés of the Irrawaddy Flotilla Company, it was urged that the portion of their salaries paid in Scotland should be exempted.

The Governor General in Council is advised that in all of these cases the incomes are liable to the tax under the terms of Section 3 (5) of the Act, since they accrue and arise (though they may not be received) in British India. The definitions of "salary" and "income" given in the Act no doubt overlap each other, but there is no reason why the one word should not be construed as supplementing rather than restricting the other; and although salary includes commissions, perquisites and profits of an employment only when received in British India, yet if profits accrue or arise in British India to any person resident in British India by reason

of his employment, and such profits are not received in this country (as in the cases in question), they are taxable as 'income' under Part IV, though, if received here, they would be taxable as 'salary' under Part I of the Second Schedule to the Act.

The decision stated in the foregoing paragraph should be acted upon by all local authorities.

(G. I., F. & C., No. 6108, dated 3rd December 1889; *vide* G. R. No. 126, dated 15th January 1890.)

37. Inheritances, whether of ancestral estate, under wills, or intestacies, and legacies are not liable to income tax. They are capital, not income, in the hands of the recipient. As to gifts *inter vivos*, it is possible in theory to divide them into gifts by way of capital and gifts by way of income, but the division could not be carried into practical effect. In England it seems clear that no gift is liable to income tax. No doubt the words of Act II of 1886 are wider than those of the English Acts, speaking of 'income' where they speak of 'profits.' Still it would not be possible to prove that a gift was given as income and not capital and no attempt should be made to levy income tax on any gifts *inter vivos*. (Adv. Gen., No. 321, dated 26th April 1890; *vide* G. R. No. 1672, dated 17th May 1890.)

38. School-prizes need not be treated as salary or income for the proposes of Act II of 1886. (G. R., F. & C., No. 562, dated 10th February 1891; *vide* G. R. No. 760, dated 2nd March 1891.)

39. A prize won in a lottery if received by a person to whom the Income Tax Act applies must be considered as income, and should be assessed under the Act.

The word 'annual' as used in the second column of Part IV of Schedule II of the Act should be read with Section 15 of the Act. It means the income for the year under assessment and not 'an annual income' constantly and regularly received. (G. I., F. & C., No. 1172, dated 23rd March 1891; *vide* G. R. No. 1456, dated 24th April 1891.)

40. The 'annual income' to be taxed is the income which recurs every year, but this does not mean that the items of which the income is composed must recur or be identical from year to year. For instance a barrister or doctor exercising his profession for a year or less is as liable to pay income tax thereon as one who exercises it for 20 years.

There is no reason why a lottery prize, or rather the excess value of the prize over the amount laid out in tickets or otherwise to purchase the chance of drawing it, should not be liable to the tax. It is money gained by speculation, but so is the profit derived by a merchant from dealing in exchange, which is undoubtedly liable to the tax. (Adv. Gen., No. 47, dated 6th April 1891; *vide* G. R. No. 1456, dated 24th idem.)

41. The amount paid from the Pension and Provident Fund of the Bombay Port Trust to a subscriber or his nominee or represntative is not liable to income tax. Such a payment is not a payment of a salary, annuity, pension, or gratuity under Section 8 of Act II of 1886, nor can it be treated as a payment of income under that Act. (Adv. Gen., No. 58, dated 30th May 1891; *vide* G. R. No. 2164 dated 18th June 1891.)

42. As a general rule, the income of property which is not applied for religious and public charitable purposes, though set apart and intended to be applied for those purposes hereafter, is not liable to exemption from income tax under Section 5, Sub-section 1, clause (*e*), of Act II of 1886. (Adv. Gen., No. 90, dated 24th September 1891; *vide* G. R. No. 3502, dated 7th October 1891.)

43. On the question whether the sum received by an executor and trustee under such a clause of a will as that marginally noted was liable to income tax the following opinion (No. 40, dated 30th April 1892) was recorded by the Honourable the Advocate General :—

"I bequeath to each of my said executors and trustees, that is to say, to each of such of them as shall have proved this will and acted according to the trusts and directions herein contained and as their remuneration for their trouble a sum equal to half a rupee per cent. on the gross amount or value of my immoveable and moveable property, whether it be ancestral or self-acquired, which may come to their hands, and I direct that such sum shall be paid out of my residuary estate and that such sum shall be independent of any legal and other expenses which my executors and trustees may incur in carrying out the trusts of this my will."

"The question appears to me to be one of considerable difficulty, and there is much to be urged in favour of the view expressed by the Collector, but on the whole I think the bequest in the will must be considered, for the purposes of this question, as any other legacy. It is, in effect, a legacy given to the executors and trustees upon consideration of their acting in the trust of the will, and though it is given to them as remuneration for their services, I think this does not make them receive it as income and not capital. It is to be observed that it is not remuneration for any particular year's work: the carrying out of the trusts may and probably will take several years or at any rate more than one year, and the 2nd Schedule of the Act only provides for assessment of income tax upon annual salaries or income. I think the case falls within the opinion of Mr. Latham, No. 32 of 1890, and the Government Resolution No. 1672 of the Financial Department, dated 17th May 1890, and that the trustees are not liable to pay income tax upon the sum they may receive or have received."

(G. R. No. 2116, dated 20th May 1892.)

44. The sum of the salaries paid to a Hindu Head Master of a Municipal School and to his wife as Head Mistress of a Municipal Girls' School in the same place cannot be considered as one salary paid to a person under Part I of the Second Schedule to Act II of 1886. The husband and his wife must each be considered as a separate person and each of the salaries must be looked at for the purpose of determining whether it is liable to tax. (Adv. Gen., No. 39, dated 17th April 1893; *vide* G. R. No. 1709, dated 4th May 1893.)

45. An officer cannot be permitted to forego pay or other allowances in order to avoid the incidence of authorized taxation. (G. I., M. D., No. 25-76-F., dated 4th August 1893; *vide* G. R., M. D., No. 1606, dated 23rd August 1893, and G. M. No. 3098, dated 5th September 1893.)

46. All income and profits accruing and arising, or received, in British India are assessable to Indian income tax, under the conditions prescribed in the Act, irrespective of the fact that such income or profits may have already been taxed in England or elsewhere out of India. The levy of English income tax in no way affects the liability to Indian income tax. (G. I., M. D., No. 456-F., dated 6th February 1894; *vide* G. R. No. 818, dated 2nd March 1894.)

47. As the Rájputána-Málwa Railway Police Force is a Government Force provided and maintained by Government, and as the Government are liable to the members of such force for their salaries, and as such salaries are paid to them by the Government, the pay of any member of the force comes within the definition of "income" in Section 3 (5) of Act II of 1886. The fact that there is a subsidiary agreement as to the apportionment of such salaries between the Railway Company and the Government does not affect the question. (Joint opinion by the Honourable the Advocate General, Bengal, and the Standing Counsel, dated 4th May 1894; *vide* G. R. No. 2070, dated 21st June 1894.)

48. The allowances made to officers of the Bombay Municipality on leave in England, whether remitted by it to Messrs. Coutts and Co., London, or drawn in Bombay by local banks on account of the officers and remitted to England, are liable to income tax. Pensions payable in England to officers of the Municipality are not so liable. (Adv. Gen., No. 83, dated 8th November 1894; *vide* G. R. No. 3867, dated 23rd idem.)

49. Copies of the following correspondence containing the decisions of the Government of India on certain questions connected with the imposition of the tax leviable under Act II of 1886 were circulated to all income tax officers for information and guidance. In sending these papers it was explained by the Government of India that they did not consider it expedient to issue any orders as to the legal liability to income tax of the Jagath Guru referred to in the correspondence, and that the orders exempting him from the payment of the tax were passed on political grounds :—

No. 677, dated 25th July 1893.

From—C. A. GALTON, Esq., Secretary to the Government of Madras, Revenue Department;

To—The Secretary to the Government of India, Finance and Commerce Department.

In forwarding a copy of the marginally-noted Proceedings of this Government, I am directed to submit, for an authoritative decision, the following questions which have

No. 676, dated 25th July 1893.

arisen, in connection with the imposition of the income tax.

2. In its Proceedings dated 20th November 1891, No. 536, the Board of Revenue ruled, in connection with a reference regarding the propriety of taxing voluntary contributions made to the head priest of a *mutt* (temple) by his disciples, that not only all sums which can be shown to have been *actually* expended on a temple or for charitable or religious purposes should be exempted from income tax, but also any sum which is to be *forthwith* expended for such purposes. This Government held that the Board's ruling went beyond the exemption allowed by clause (*e*), Section 5 of the Income Tax Act, on the ground that donations are not income "derived from property solely employed for religious and charitable purposes," and are, therefore, not exempt from the tax.

G. O., dated 22nd January 1892, No. 70.

3. In its Proceedings dated 28th June 1892, No. 342, the Board referred for decision the following questions :—

(*i*) Whether the words "solely employed for religious or public charitable purposes" in Section 5 (1) (*e*) of the Income Tax Act qualify the word "income" or the word "property."

(*ii*) Whether temples are liable to income tax on the value of the gifts and offerings of devotees, when such value exceeds Rs. 500 per annum.

(*iii*) Whether *tasdik* allowances of temples (*i.e.*, payments in money or by deduction from beriz made in lieu of assignments of land revenue now resumed) and the incomes received by some temples from the Mysore State are liable, when they exceed Rs. 500 per annum.

This Government held that the expression "solely employed for religious or public charitable purposes" in clause (*e*) of Section 5 (1) of the Income Tax Act qualifies the words "income," not "property," and that consequently income which is derived from property, and which is also solely employed for religious or public charitable purposes, is exempt; if either condition fails, the income is taxable. Applying this principle to the case stated by the Board, this Government ruled that ferry-rents and the interest derived from money lent are "income derived from property," and that if devoted to religious uses, they would be exempt, whilst chance donations and subscriptions had already been declared to be taxable inasmuch as they are not income derived from property.

As regards the assessment to income-tax of *tasdik* allowances assigned by the State to temples, it was held that from a careful examination of the history of these allowances their origin cannot, except in a few districts, be traced, with certainty, to the resumption by the State of lands formerly belonging to religious bodies; and as probably in the great majority of cases, the payments in question have been made as money payments from a period anterior to the commencement of British rule, there is no ground for their exemption.

4. Acting on the foregoing orders, the Board has directed that church offertories, donations, and subscriptions to religious and charitable associations and the receipts of clubs should be taxed.

G. O., dated 21st June 1893, No. 547.

5. This proceeding has given rise to a good deal of irritation which has manifested itself by articles and letters in the public journals, and the Board has referred the question for reconsideration, arguing that, under the construction it has put upon the wording of clause (*e*), section 5 (1) of the Income Tax Act, the income of religious and charitable institutions derived from donations or subscriptions would be exempt, and that clubs, though not public charitable institutions, should be exempt on the ground that no income in the sense of gain or profit is made. If, however, this contention is not accepted, the Board suggests the propriety of admitting

as a set-off against the receipts from donations and subscriptions the expenditure incurred during the year of assessment on account of the objects of the institution.

6. In the opinion of His Excellency the Governor in Council, the terms of section 5 (1), clause (*e*) of the Income Tax Act are not as explicit as they might be, but it seems clear that the Legislature did not intend to exempt from income-tax *all* funds expended on religious or public charitable purposes; for if it had intended to do so it would have said so in express terms.

Whether the expression "solely employed for religious or public charitable purposes" qualifies the word "property" as the Board contends, or the word "income" as the Government has ruled, chance donations and subscriptions would be taxable, as they do not constitute income derived from property so appropriated. But whether the above view is correct or not, this Government is strongly of opinion that, looking to the amount of irritation and discontent which would be caused by the taxation of contributions which are expended solely on religious and public charitable objects, such as church offertories, donations, and subscriptions to missions, hospitals, and charitable associations like the Friend-in-Need Society, a notification should be published under section 6 of the Act, granting exemption from liability in all such cases. The Local Government might be vested with authority to decide in cases of doubt whether a particular association falls within the scope of the exemption or not.

7. It has not escaped the attention of His Excellency the Governor in Council that substantial loss of revenue may be incurred by the exemption from taxation of the considerable revenues derived by Hindu temples from gifts and offerings; but, in his opinion, the exemption cannot be applied to one creed or religious body: all must be treated alike, and the loss of revenue involved is a less evil than the bad feeling which would be created by the imposition of the tax.

8. In its proceedings dated 15th June last, No. 2213, copy of which is forwarded herewith, the Board reports on the appeal of the Agent of the Jagath Guru or high priest of the Sringari Mutt in Mysore, who during his tours in Southern India receives large sums from his disciples which, he alleges, are devoted exclusively to religious and charitable purposes. Relying on the rulings already adverted to, the Collectors of the districts through which the Guru passed during a recent tour assessed these contributions to income tax. His case is similar to that of any other dispenser of funds contributed for religious or charitable purposes of a *public* nature, and the treatment of it depends on the decision which may be arrived at on the general question. In the opinion of His Excellency the Governor in Council, only so much of the Guru's income from this source as is *bonâ fide* expended on the upkeep of the temple or in the dispensation of public charity should be exempted. His personal expenditure during his travels should be held liable to income tax, just as much as the salaries of Chaplains and Missionaries. The contention of the Guru, that the contributions made by his followers are covered by the exemption of "sumptuary allowances" in Section 3 (4) is based on a misapprehension of the meaning of the term and cannot be admitted.

9. The case of clubs again is different; they are not religious or public charitable institutions; and Section 5 (1), clause (*e*), of the Income Tax Act does not apply. It is argued that such institutions, unless they are of the proprietary kind, are not worked for profit, and should therefore be exempt. But under the definition of "income" in Section 3, (5) of the Act both the income *and* the profits are liable, whereas only one or the other should be. In the opinion of this Government, only the income of clubs consisting of the sum total of

subscriptions should be taxed. I am also to add that, in the opinion of His Excellency in Council, the definition of "income" might advantageously be amended.

10. In conclusion, I am to say that, pending the decision of the Government of India on the questions raised above, instructions have been issued to postpone making any collections of income tax or taking any proceedings under the rulings of this Government.

Extract from the Proceedings of the Government of Madras, Revenue Department, No. 70 (Revenue), dated 22nd January 1892.

Read the following :—

Proceedings of the Board of Revenue (Separate Revenue),—dated 20th November 1891, No. 536.

Read the following :—

Proceedings of the Board of Revenue (Land Revenue),—dated 21st June 1887, No. 253.

Read the following :—

No. 293, dated 6th June 1887.

From—H. SEWELL, Esq., Acting Collector of South Arcot,

To—The Secretary to the Commissioners of Land Revenue.

I have the honour to inquire whether the head priest of a *mutt*, of which there is one in this district, known as Emberumana Jeeyar Mattam at Tirukoilur, can be assessed to income tax on account of gifts made to him by his disciples or members of the congregation during his visitation.

2. The income derived by these gifts is, it is said, devoted to feeding the donors' and his own retinue, and that very little is saved; but it is not stated to what purpose the savings, if any, are devoted. The head priest has, however, other trade and dealings* for which he has been taxed since 1882.

* *Sic.*

3. The Bengal Board of Revenue held (*vide* page 9 of Grimley's Manual) that voluntary contributions of visitors of Gya to the priests of that place are subject to assessment, except as regards such portion of it as may be proved to be devoted to keeping up temples and shrines.

4. I think that case is parallel to this one, and that the head priest of Tirukoilur is bound to account for the expenditure out of his gifts before he can claim exemption from taxation in respect of them. He has, however, not been taxed with reference to these gifts yet, but it is proposed to do so.

No. 253, dated 21st June 1887.

RESOLUTION.—The Collector is informed that, in the opinion of the Board, the priest may be taxed on all the income which he receives which he cannot satisfactorily show to have been expended on the temple or for charitable or religious purposes.

Read—

Petition from STRI JIR SWAMIGAL, of Vanamalai Mattam, Nanguneri Taluq, Tinnevelly District, dated 8th August 1891, praying for refund of the income tax that has been levied from him.

Reference on the above, dated 25th August 1891.

Referred to the Collector of Tinnevelly for remarks.

Read the following :—

No. 652, dated 8th October 1891.

From—G. S. FORBES, Esq., Acting Collector of Tinnevelly,

To—The Secretary to the Commissioners of Land Revenue.

I have the honour to reply to Board's reference, dated 25th August 1891, on the petition (Register No. 2686 of 1891) of the Jir Swamigal, of Vanamamalai Mattam, Nanguneri Taluq, appealing against his assessment to income tax.

2. The petitioner claims exemption under Section 5 (1) (*e*) of the Act, but the exemption applies only when the income is employed for religious and charitable purposes. The Board in its Proceedings No. 253, dated 21st June 1887, has ruled clearly that all income which is not satisfactorily shown to have been expended on such purposes is taxable. In the present case it is not proved to have been spent at all. On the contrary, the petitioner's agent clearly stated in his written statement before the Head Assistant Collector that only the wooden portion of the silverplated car, for the construction of which the large sums in question are intended, was in progress, and that the rest of the work, the really costly portion of it, was not to be commenced till the return of the Jir, which was not till after the close of the year for which the assessment was made. Moreover, it was practically admitted at the hearing that the money was not in fact spent, although it was intended to be spent in the manner stated. My reasons for holding that the mere intention to devote money to a religious object was not enough to exempt it from assessment are stated in my judgment.

3. The important records in the case are herewith submitted for reference.

No. 536, dated 20th November 1891.

RESOLUTION.—The Board, as now constituted, is of opinion that not only the sum which has been shown as *actually* expended on the temple or for charitable or religious purposes should be exempted from income tax, but also any sum that is to be *forthwith* expended for such purposes.

2. Board's Proceedings dated 21st June 1887, No. 253, (Land Revenue), will accordingly be modified by the addition of the words "or are about to be forthwith expended" after the words "have been expended."

3. The petition of the appellant will be forwarded to the Collector of Tinnevelly for disposal in accordance with the above remarks.

4. Appellant will be referred to the Collector, who has received orders on his case.

Order thereon by the Government of Madras.

The Government considers that the Board's ruling goes beyond the exemption allowed by clause (*e*), Section 5 of the Income Tax Act. Donations are not income derived from property employed for religious or public charitable purposes, and are therefore not exempt from the tax.

Extract from the Proceedings of the Government of Madras, Revenue Department, No. 122, dated 8th February 1893.

Read the following :—

Proceedings of the Board of Revenue (Separate Revenue), dated 28th June 1892, No. 342.

Read the following :—

No. 1467, dated 16th April 1892.

From—V. A. BRODIE, Esq., Acting Collector of South Kánara,

To—The Secretary to the Commissioner of Salt, A'bkári and Separate Revenue.

When inspecting the income tax registers of the Uppinangadi Taluk, I discovered that the Tahsildár had exempted the Uppinangadi temple from assessment on account of income exceeding Rs. 500 per annum, derived from interest on money lent and from the lease of the ferry at Uppinangadi, on the ground that this income was devoted to temple, *i.e.*, religious purposes, and ruled, that he was wrong in so doing, on the strength of the decision of the Board (Land Revenue) on the appeal of the Basel Mercantile Mission assessed in this district.—Board's Proceedings (Land Revenue) of the 14th July 1891, Miscellaneous No. 4916.

2. On the issue of Board's Proceedings (Separate Revenue) of the 20th November 1891, No. 536, which has, however, been since modified by the order of Government, communicated by Board's Proceedings (Separate Revenue) of the 18th February 1892, No. 108, the Tahsildár requested a reconsideration of my orders, on the ground that this income was certainly spent on temple purposes, and also on the somewhat strained argument that even if the words in Section 5 (1) (*e*) of the Act "solely employed for religious or public charitable purposes" qualify the word "property," and not the word "income," as the money and ferry are the property of a temple, the income derived therefrom is exempt; as the lending of the one and the leasing out of the other may both be considered different forms of the remunerative employment of *temple* property for the benefit and purposes of the temple, which must perforce be held to be religious purposes.

3. In my report on the appeal of the Mercantile Mission disposed of in the Proceedings of the Board (Land Revenue) above quoted, I raised the question whether the words in Section 5 (1) (*e*) "solely employed, &c." qualified the word "income" or the word "property," as this was not very clear from the wording of the clause and decisions; but on this point definite orders were not passed, though, as the Board held not only the income payable to the debenture-holders as interest, but also the surplus profits transferred to the Evangelical Branch of the Mission for the upkeep and extension of its Missionary enterprise, liable to tax, I have inferred that they considered the words to qulify the word "property," not the word "income."

4. I have the more readily come to this conclusion because if the words "solely employed, &c.," were intended to qualify the word "income," the conjunction "and" should have been inserted between them and the word "property," or at any rate words "derived from property" should have been separated by commas from the other words of the clause. Every one, too, whom I have asked to construe the sentence, has also expressed the opinion that as it stands these words qualify the word "property."

5. Under these circumstances, I respectfully solicit a ruling as to whether the words "solely employed for religious or public charitable purposes" in Section 5 (1) (*e*) qualify the word "income" or, which comes to the same thing, the words "income derived from property," or the word "property," to enable me to dispose of the Tahsildar's reference regarding the income of the Uppinangadi temple from ferry-rent and interest on money lent, for the Government of India does not appear ever to have issued any notification exempting the income of religious institutions from assessment, as they have in the case

of universities, &c. (Notification of 27th April 1886, No. 434). Personally, I am inclined to think that under the general rule that fiscal enactments are to be construed in favour of the subject, the words "solely employed, &c.," should be construed as qualifying the word "income" or, what is the same thing, the words "income derived from property," as this seems a possible construction; but I refer the question as already stated, because the decision of the Board in the appea of the Mercantile Mission seems to be based on the contrary view. The only reference I can find throwing light on the point in the Income Tax Manual is paragraph 10 of the Government of India Notification No. 593 of the 5th February 1886, and the form D appended thereto, which appear certainly to assume the rendering that the words qualify the word "income."

6. Whilst on this subject I would also ask whether the *tasdik* allowances of temples are liable to income tax where they exceed Rs. 500 per annum in amount, and also the income some temples receive from the Mysore State. The latter certainly seems taxable, but it has not yet been taxed. *Tasdik* allowances are not paid subject to the tax where they exceed Rs. 500, partly on the assumption that they are covered by Section 5 (1) (*e*), though this clearly is not so, and partly on the ground that these payments are made in lieu of assignments to land revenue resumed by Sir Thomas Munro when Kánara became British territory. This ground appears also to me to be of no validity; for whatever the origin of these allowances, they are now money payments of the nature of donations or subscriptions by the State, and were not income derived from *land* of the kind specified in Section 5 (1) (*e*) when the Act came into force, even though such allowances are usually paid on the beriz deduction system. I propose therefore to issue orders that when such allowances exceed Rs. 500 per annum, income tax should be deducted; but as the question is a general one, I should like to have the Board's approval and sanction before adopting the course, though, as the law now stands, it seems to be the only legal one. As regards the political expediency of taxing the income of religious institutions, I am very doubtful though, and would suggest that the Government of India might be moved to issue a notification similar to that of the 27th April 1886, No. 434, exempting the income of religious and charitable institutions, from whatever source derived, from assessment; for, as the law now stands, even the income of the Friend-in-Need Society appears to be taxable, in so far as it is derived from donations and subscriptions, and most of it must be. By straining the meaning of the word "educational" in the above-quoted Government of India Notification, temples might be held to come within its provisions as being "educational" institutions; but, so far as my observation goes, this would be a very strained application of the word, and this does not provide for the case of charitable associations where their income is not derived from property and they seem entitled to as great consideration or more.

Read the following:—

No. 1463, dated 14th May 1892.

From—W. A. WILLOCK, Esq., Collector of Vizagapatam,

To—The Secretary to the Commissioner of Salt, A'bkári and Separate Revenue,

Government in its Order No. 70, dated 22nd January last, ruled that donations to religious or charitable institutions are liable to pay income tax in the case of the Vanamamalai Mutt. My Treasury Deputy Collector in consequence deducted income tax on the grant paid by Government to the Waltair Orphan Asylum in April last. This is a grant equivalent to

the subscriptions raised which Government has long made in aid of this institution.

2. I doubt if the charge was correctly made. The word *person* is used in Section 7 of the Act—that under which the deduction was made. Section 3 defines person as including a firm and Hindu undivided family, thereby implicitly excluding institutions or a committee managing an institution. Section 23, however, contemplates the taxation of a committee, but the heading of the part of the Act (trustees, agents, manager and incapacitated persons) rather favours the idea that the word is used with regard to committees dealing with the affairs of persons in the proper sense of the word, and not to committees of institutions.

3. The question at issue is, in its most important form, whether temples are liable to taxation on the value of the gifts and offerings of devotees, and I request the Board's decision on the subject. I am not aware of any such assessment having been made yet.

No. 342, dated 28th June 1892.

RESOLUTION.—The questions raised in the papers read above will be submitted for the orders of Government.

2. The questions for decision are—

(i) Whether the words "solely employed for religious or public charitable purposes" in Section 5 (1) (*e*) of the Income Tax Act qualify the word "income" or the word "property."

(ii) Whether temples are liable to income tax on the value of the gifts and offerings of devotees, when such value exceeds Rs. 500 per annum.

(iii) Whether *tasdik* allowances of temples (*i.e.*, payment in money or by deduction from beriz, made in lieu of assignments of land revenue now resumed) and the incomes received by some temples from the Mysore State are liable, when they exceed Rs. 500 per annum.

3. As regards the first question, the Board is of opinion that the words referred to qualify the word "property." This seems the only logical interpretation, but its result is, if the ruling in Government Order, dated 22nd January 1892, No. 70, were also adopted, to practically nullify the exemption which Section 5 (1) (*e*) of the Act was obviously meant to allow. In the case quoted by the Collector, for instance, neither the ferry receipts, nor the interest on money lent, can be said to come within the section; for in both cases the receipts are derived from a *secular* use of the property from which they accrue. So again, if a temple own houses, let them out for trade or dwelling purposes, and appropriated the rent to religious services, &c., the exemption would still not arise, because the house from which the rent accrues is used for secular purposes.

4. Again the Madras Government in G. O., dated 22nd January 1892, No. 70, referred to above, practically says that *donations* for religious or charitable purposes are not exempt from income tax because, though they are property employed for religious or charitable purposes, they are not "income" accruing from such property. The Board, however, begs to submit that though a donation is not "income" to the donor, it may be so to the donee. If, for instance, *A* puts a rupee into the collection plate when he goes to church that rupee becomes part of the fund from which the church meets its ordinary expenditure. To the church it is income: and as it is derived from property which *A* has devoted to religious purposes, it is, the Board submits, exempt from taxation as a church receipt under Section 5 (1) (*e*) of the Act. The case of the donations to the Tinnevelly temple dealt with in the

Government Order under reference is of a similar nature. And if the Government Order is right, then, not only was the ruling in Board's Proceedings, dated 20th November 1891, No. 536, which, it disallowed, wrong, but also the previous ruling in Board's Proceedings, dated 21st June 1887, No. 253 (reprinted in the later Proceedings), with which Government did not interfere.

5. As the law now stands, and if the interpretation put by Government on Section 5 (1) (*e*) of the Act were acted upon, religious and charitable institutions will practically get no relief at all under that section. The donations on which they rely for their upkeep are declared taxable, and any income they may derive from investments is in the same predicament, since the property from which it comes is being applied for the time being to secular ends. As Mr. Brodie says, the Friend-in-Need Society would, for instance, be taxable in respect of the subscriptions it receives; so also would every church or temple be taxable in respect to its offertories.

6. It requires to be noted in this connection that paragraph 10 of the Government of India Notification, dated 5th February 1886, No. 593, printed on pages 27 to 29 of the Income Tax Manual, is not in accordance with Section 5 (1) (*e*) of the Act as the Board interprets it in paragraph 3 of these Proceedings. The *property, i.e.*, the sum represented by the securities, is not necessarily being used at the time for religious or charitable purposes. It may, for example, be employed, if the securities are Government ones, in a frontier expedition.

7. The best solution of the difficulties above brought to notice would probably be that suggested by the Collector of South Kánara, *viz.*, a notification by the Government of India under section 6 of the Act, similar to that which has already been issued in the case of universities, &c., (*vide* Government of India Notification, dated 8th February 1888, No. 676, communicated in G. O., dated 13th March 1888, No. 217).

8. As regards the *tasdik* allowances referred to in question (iii), the Board agrees with the Collector of South Kánara that, however they originated, they are now, and have been for many years past, donations or subscriptions by the State, and stand, therefore, on the same footing as the usual donations of private persons referred to in paragraph 4 above.

9. As regards paragraph 2 of the second paper read above, the Collector of Vizagapatam will be informed that Section 3, clause (7) of the Income Tax Act should be read with the definition of "person" in Section 2, clause (3) of the General Clauses Act (I of 1868) which makes it include "any company, or association, or body of individuals." The Collector appears to have made his query with reference to Sections 7—9 and 14—17 of the Income Tax Act, which speak of the taxation of *persons*. But even so a temple, or orphanage, or charitable institution would be taxable, unless otherwise exempt, under the definition above quoted.

Order thereon by the Government of Madras.

The Government is unable to accept the views expressed in the Board's Proceedings read above. In the first place the expression "solely employed for religious or public charitable purposes" in clause (*e*) of section 5 (1) of the Income Tax Act qualifies the word "income" not "property," as supposed by the Board. Consequently, income which is derived from property, and which is also solely employed for religious or public charitable purposes, is exempt; if either condition fails, the income is taxable. The above construction is in accordance with the wording of Form D appended to the Government of India Notification, dated 5th February 1886, No. 593, and is also less strained than the Board's. Under the latter it would be difficult to conceive any kind of property which can be solely

employed for religious or public charitable purposes, and which brings in an income at the same time. As a matter of fact, it is only the rents or interests accruing from houses or securities which are employed for these purposes and it is immaterial to what object the houses may be devoted or in what kind of business the securities may be invested.

2. With reference to the case reported on by the Collector of South Kánara, the Government is of opinion that the ferry-rents and the interest derived from money lent are income derived from property and that, if devoted to religious uses, they would be exempt.

3. The Government has already decided that chance donations and subscriptions are taxable, on the ground that they do not constitute income derived from property.

4. The Government doubts if the Government of India will be prepared to exempt donations and subscriptions to religious and charitable institutions, offertories and all such casual receipts, seeing that the exemption in clause (*e*) was purposely limited to the income derived from *endowments*, and that its extension to all sums contributed for religious and public charitable purposes would be likely to give rise to evasions of the tax (*vide* also note I under clause (*e*) of Section 5 (1) at page 8 of Grimley's Income Tax Manual).

5. The third question submitted by the Board for the decision of Government is whether *tasdik* allowances should be exempted from payment of income tax. These allowances are defined by the Board to be "payments in money or by deduction from beriz, made in lieu of assignments of land revenue now resumed." It appears to His Excellency the Governor in Council, however, upon a careful examination of the history of *tasdik* allowances, that their origin cannot, except in a few districts, be traced, with certainty, to the resumption by the State of lands formerly belonging to religious bodies, and that probably in the great majority of cases the payments in question have been made as money payments from a period anterior to the commencement of the British rule. In these circumstances, the Government is not prepared to recommend to the Government of India that this class of incomes be exempted from the deduction of income tax. In practice, however, it will be found that most of the *tasdik* allowances are already exempted under clause (*j*) of section 5 (1) of the Income Tax Act.

Extract from the Proceedings of the Government of Madras, Revenue Department,—No. 547 (Revenue), dated 21st June 1893.

Read the following :—

Proceedings of the Board of Revenue (Separate Revenue),—dated 16th May 1893, No. 210,

Read the following :—

No. 1170-Ver., dated 17th April 1893.

From—J. N. ATKINSON, Esq., Acting Collector, Kistna,

To—The Secretary to the Commissioner of Salt, A'bkári and Separate Revenue.

The Government has ruled in paragraph 4 of its Order No. 122, Revenue, dated 8th February 1893, communicated in Board's Proceedings, No. 63, dated 15th February 1893, that subscriptions to and offertories in churches, and all similar casual receipts should be assessed to income tax. Clubs which are not of the proprietary kind are exempted from taxation, solely on the ground that the income is ordinarily derived from the subscriptions of the members, which are expended for the purposes of the club, and not with the object of making a profit—*vide* reply to query No. 58 at page 69 of Grimley's

Income Tax Manual. The same principle that renders clubs exempt, *viz.*, that the receipts are not expended with the object of making profit, seems to me to apply in the case of church offertories and the like. For instance, the offertories in St. Mary's Church in Masulipatam are expended partly on church lights, partly on the pay of a sweeper and similar items (*i.e.* for the purposes of the worshippers), and partly on charity (*i e.*, certainly not for profit). In the foregoing circumstances, I have the honour to request instructions whether I may proceed to assess income derived from such offertories.

No. 210, dated 16th May 1893.

RESOLUTION.—The principle on which the Bengal ruling quoted by the Collector is based is opposed to the ruling of Government in paragraph 4 of G. O. No. 122 (Revenue), dated 8th February 1893, communicated with Board's Proceedings, No. 63 (Separate Revenue), dated 15th February 1893, and the Board is unable to see how that principle can be reconciled with the plain meaning of clause (*e*), Section 5 (1) of the Income Tax Act. The Collector should follow the ruling of the Madras Government.

Extract from the Proceedings of the Board of Revenue (Separate Revenue),—No. 2204-Mis., dated 13th June 1893.

Read again—

Board's Proceedings (Separate Revenue),—No. 210 (Press), dated 16th May 1893.

Read also the following :—

No. 1704-Ver., dated 3rd June 1893.

From—J. N. ATKINSON, Esq., Acting Collector of Kistna.

To—The Secretary to the Board of Revenue, Madras.

With reference to Board's Proceedings, No. 210 (Press), dated 16th May 1893, I have the honour to say that on the principle which appears to be therein adopted I am proceeding to assess all clubs in this district in which the amount of subscriptions and other payments amounts to or exceeds the taxable minimum. I request to be informed if I am right.

RESOLUTION.—In the second paper read above, the Collector of Kistna reports that he is assessing all the clubs in the district on the principle which appears to be adopted in the Board's Proceedings again read above.

2. The principle which the Collector was told to follow in these Proceedings was that enunciated by G. O. dated 8th February 1893, No. 122 (Revenue), wherein it is declared that chance donations and subscriptions are taxable on the ground that they do not constitute income derived from property. In accordance with this ruling, the Collector was told that offertories could not be exempted, and that the Bengal ruling which he cited could not be applied, being opposed to the ruling of this Government.

3. The liability of subscription to clubs to taxation seems to the Board to be a logical deduction from the orders as they now stand, as it is difficult to distinguish between the subscriptions paid in the way of offertories by the members of a church towards a common object, such as the maintenance of the buildings in which they assemble to worship, and the subscriptions paid monthly by members of a small club towards the upkeep of a building in which they assemble to play cards or read papers. In the latter case, indeed, both the conditions specified by Government in the G. O. above quoted fail,

as the income is not derived from *property* or devoted to a public charitable purpose.

4. It seems, under the orders of Government above alluded to, however, to be wrong to include payments other than subscription in the assessable income, as the Collector appears to have done, since these payments are in many cases for liquor or provisions supplied, and are, therefore, to be distinguished from donations and subscriptions.

5. The whole question turns on the interpretation of Section 5 (1) (*c*) of the Income Tax Act. In its proceedings dated 28th June 1892, No. 342, the Board gave its opinion that the words "solely employed for religious or public charitable purposes" qualified the word "property," and deprecated the limitation of the words "derived from property to property in the possession of the assessee." In Government order, dated 22nd January 1892, No. 70 (Revenue), Government appears to have read the clause in the same sense as the Board, as the words "employed for religious or public charitable purposes" in that order obviously qualify the word "property" and not the word "income," but in the subsequent order (Government Order, dated 8th February 1893), No. 122 (Revenue), Government adopts a different construction, apparently in view of the wording of Form D appended to Government of India Notification, dated 5th February 1886, No. 593, and because it was found difficult to conceive any kind of property which could be solely employed for religious or public charitable purposes, and which brought in an income at the same time. It is true that the wording of Form D suggests the interpretation adopted, but in Government Order No. 55, dated 1st February 1889, Government took the opposite view and held that the net income of the Basel Mission was liable to assessment, because it was not derived from property solely employed for religious or public charitable purposes. The net income in this case was devoted to religious and charitable purposes; so that there is no doubt that the qualifying clause was then considered to relate to the word "property."

6. In view of the fact that the assessment of offertories, whether to churches or temples, and of clubs and similar institutions supported by the voluntary contributions of members, apart from any consideration as to whether the income so derived is devoted to the object of making a profit or not, is likely to cause a considerable amount of irritation and discontent, the Board respectfully begs to submit the question for the reconsideration of Government.

7. Under the Board's interpretation of the clause [*vide* Board's Proceedings, No. 342, dated 28th June 1892 (Separate Revenue)], the income of religious or public charitable institutions derived from donations or subscriptions would be exempt, and clubs, though not public charitable institutions, should, the Board thinks, be exempt on the ground that no income in the sense of gain or profit is made; the subscriptions of members being merely contributions towards a definite expenditure which they mutually agree to incur for their personal amusement.

8. If, however, the present rule is to continue in force, the Board would suggest the propriety of admitting, as a set-off against the receipts from donations and subscriptions, the expenditure incurred during the year of assessment on account of the objects of the institution.

Extract from the Proceedings of the Board of Revenue (Separate Department).

No. 2213, Mis., dated 15th June 1893. Read again—

Proceedings of the Board of Revenue (Separate Revenue), —dated 15th May 1893, No. 1786-Mis., forwarding to

the Collectors of Coimbatore and Salem, for early report, petition to Government from Subromania Sastriah, Agent to Sringari Mutt, appealing against the imposition of income tax.

Read also the following :—

Dated 25th May 1893.

From—The Collector of Coimbatore ;

To—The Secretary to the Board of Revenue.

[*Reference on No. 883—Board.*]

With reference to G. O. No. 1749, dated 10th May 1893, communicated with Board's Proceedings, No. 1786, dated 15th May 1893, I have the honour to submit a copy of Mr. Sturrock's order on the objection petition of the Agent of the Sringari Mutt.

2. The petitioner does not say that his income is too highly estimated, but that it is not taxable.

3. I understand that Mr. Sturrock considered that although the petitioner was legally liable to pay the tax, Government should be moved to exempt him. I therefore suggest that Mr. Sturrock may be consulted. I am personally of opinion that money which is spent on feeding Brahmins and other similar objects should not be exempted from income tax.

Read also—

Dated 12th June 1893.

From—The Collector of Salem,

To—The Secretary to the Board of Revenue.

[*Reference on No. 2330-Eng.*]

With reference to Board's Proceedings, dated 15th May 1893, No. 1786-Mis., I have the honour to report as follows.

2. The Collector of Coimbatore, in his letter dated 8th February 1893, No. 181, stated that the Jagath Guru of the Sringari Mutt, who visited a portion of his district on his way to Ramaswaram, left Karur (Coimbatore District) for Mohanur in this district, and that the Guru received Rs. 56,516 by way of gifts in his district, and requested that the same might be taken into account along with any donations he might receive in this district, in assessing the Guru to income tax for the year 1892-93.

3. As there was some delay in obtaining information in regard to the Guru's income in this district, from the Divisional Officers, the Collector of Coimbatore was requested to assess the Guru separately on the income derived in his district, and informed that steps would be taken to assess the Guru separately in this district, if necessary.

4. The replies received from the Sub-Collector, the Head Assistant Collector, and the Head-quarters Deputy Collector showed that the Guru did not pass through their Divisions. The General Charge Deputy Collector reported that when the Guru had encamped at Mohanur (Namakal Taluk of the district) he received presents amounting to Rs. 1,400, the whole of which he spent in feeding the poor of all castes, and that when he had encamped at Bhavani (Bhavani Taluk of the Coimbatore District) the Mahajans of Komarapalaiyam and other river adjoining villages of the Trichengode Taluk gave presents to him amounting to Rs. 1,325. It was not known whether the latter sum of Rs. 1,325 was included in the sum of Rs. 56,516 reported by the Collector of Coimbatore to have been received in his district ; and it was too late to ascertain if it were so from the Collector of Coimbatore. I thereupon, in my memorandum, dated 18th March 1893, No. 844, requested the General Charge Deputy Collector to assess the Guru

on the income of Rs. 2,725, informing him at the same time that, if it appeared on objection petition (if one was presented) that the sum of Rs. 1,325 had been taken into account by the Collector of Coimbatore in assessing him in that district, he should reduce the tax accordingly.

5. The General Charge Deputy Collector assessed the Guru accordingly to a tax of Rs. 70-15-5 on the income of Rs. 2,725. He reports that the Guru objected to the imposition of the tax, on the ground that the income was given in charity, and that he dismissed the objection petition on the ground that the income was assessable under G. O., dated 18th February 1893, No. 122 (Revenue), communicated in Board's Proceedings, dated 15th February 1893, No. 63.

6. The records connected with the objection petition, together with the General Charge Deputy Collector's letter, dated 4th June 893, reference on No. 1514-Eng., are herewith submitted as per list enclosed.

Read also—

No. 1557, dated 13th June 1893.

From—The Collector of Madras;

To—The Secretary to the Board of Revenue.

I have the honour to reply to Board's reference G. R. No. 5035, dated 7th June 1893.

2. With regard to the legal position, I have nothing to add to what I have said in my order, of which copy has been forwarded by Mr. Dance.

3. With regard to the equity of the case, it seems to me that clause (*e*), Section 5 of the Income Tax Act gives distinct expression to the view of the Legislature that revenue should not be derived from the income employed for religious purposes, and the limitation of the exemption to income derived from property does not appear to be based on any principle, but to have been rendered necessary by the practical difficulty of guarding against fraud referred to in paragraph 4 of G. O. No. 122, dated 8th February 1893. In the case, however, of recognized religious institutions like the Sringari and other similar "Mutts," it cannot be said that this danger exists any more with regard to one kind of income than another; and I think that the Government of India might be moved to issue a notification as suggested in paragraph 7 of Board's Proceedings, No. 342, dated 28th June 1892.

4. When the only point for consideration is whether income from voluntary contributions should be put on the same footing as income derived from property, Mr. Dance's reference to the nature of the religious objects on which the funds are expended seems to me to be beside the question.

5. The enclosures of the Board's reference are returned.

RESOLUTION.—The reports of the Collectors of Coimbatore, Salem, and Madras read above will be submitted to Government with reference to its order, dated 10th May 1893, No. 1749.

2. The Board has in another connection in its (Board's) Proceedings, No. 2204-Mis., dated 13th June 1893, recently asked Government to reconsider the ruling contained in G. O. No. 122, dated 8th February 1893, on which the assessments now appealed against are based.

3. The second assessment imposed by the Collector of Salem would appear to be illegal,—*vide* G. O., dated 15th July 1886, No. 587 (Revenue), printed at page 82 of the Income Tax Manual.

Extract from the Proceedings of the Government of Madras, Revenue Department,—No. 676, dated 25th July 1893.

Read again—

G. Os., dated 22nd January 1892, No. 70; 8th February 1893, No. 122; 21st June 1893, No. 547.

Read again—

G. O., dated 10th May 1893, No. 1749, referring to the Collectors of Salem and Coimbatore for report petition from Subramania Sastriah, Agent, Sringari Mutt, against the imposition of income tax.

Read also—

Proceedings of the Board of Revenue (Separate Revenue), dated 13th June 1893, No. 2204, and 15th June 1893, No. 2213.

Order thereon by the Government of Madras.

The questions raised in the foregoing papers will be referred for the decision of the Government of India; meanwhile the Board will be directed by telegram to issue orders to all Collectors to postpone making any collection of income-tax or taking any proceedings under G. Os., dated 22nd January 1892, No. 70, and 8th February 1893, No. 122, pending further instructions.

No. 385-S. R., dated 26th January 1894.

From—J. F. FINLAY, Esq., Secretary to the Government of India, Finance and Commerce Department,

To—The Secretary to the Government of Madras, Revenue Department.

I am directed to acknowledge the receipt of your letter No. 677, dated the 25th July 1893, submitting, for authoritative decision, certain questions which have arisen in connection with the imposition of the tax leviable under Act II of 1886.

2. In consequence of the existence of some uncertainty as to the correct interpretation of the terms of Section 5 (1), clause (*e*), of that Act, doubts have arisen as to the extent to which the incomes of temples, churches and other religious or charitable associations are liable to assessment, especially in so far as the incomes may consist of casual donations or subscriptions. In this connection reference is made to the case of the Jagath Guru of the Sringari Mutt in Mysore, whose income consisting of sums contributed by his disciples has been locally assessed to income tax, although it is alleged to be devoted exclusively to religious and charitable purposes, and finally the question is raised whether the receipts of clubs are liable to taxation as "income."

3. I am to say that the Government of India have already decided that the words "solely employed for religious or public charitable purposes" in Section 5 (1), clause (*e*) of the Act qualify the word "property," and not the word "income," and that the income derived from offerings to shrines and temples is exempt from income tax. A copy of the papers * containing the decision of the Government of India on the subject is enclosed.

*From the Government of the Punjab, No. 1367, dated the 20th June 1887, and enclosures.
To the Government of the Punjab, No. 4206, dated the 6th August 1887.
Proceedings of the Government of the Punjab, in the Financial Department, for May 1889.
To the Government of the Punjab, No. 4199, dated the 14th August 1889.
From the Government of the Punjab, No. 209 S., dated the 19th June 1890.
To the Government of the Punjab, No. 3504, dated the 18th July 1890.

4. Although, however, voluntary donations or subscriptions employed for religious or charitable purposes should not be held, as regards any religious or charitable institution, to form an income liable to taxation, the personal support or expenditure of a minister of religion is not, as regards the taxation of his income, a religious or charitable purpose. If, as would appear from the papers accompanying your letter No. 3708, dated the 10th October 1893, the offerings received by the Guru, referred to in paragraph 8 of your letter under acknowledgment, were made to him personally, and not to any temple, or idol, then, according to the principles above stated, the Guru would be assessable on the amount of such customary offerings in so far as they can be considered as in the nature of a stipend or customary offering made to him for his personal support, on account of his position as Guru, and not for employment in religious or charitable purposes.

5. It has, however, been represented to the Government of India that the Guru, who is a resident of Mysore, and is entirely outside the operation of the Income Tax Act, so far as his residence is concerned, is the head of a large religious order which has shrines scattered all over India to which he pays visits in some kind of state, and on these visits he collects large donations from his disciples, &c. It has also been represented that the Guru himself is a "Sanyasi" or religious ascetic, and, as such, is incapable of acquiring personal property; that, when on tour, he travels with a large retinue, and that a considerable part of the offerings received by him no doubt goes towards the maintenance of this retinue. If the circumstances of the case have been correctly represented, the Government of India, I am to say, consider it doubtful whether, even if the Guru is technically liable to income tax in respect of offerings received by him on his tour through a district in the Madras Presidency, it is advisable to raise the question of his liability. I am accordingly to request that the Government of India may be favoured with an expression of the opinion of His Excellency the Governor in Council in the matter.

6. As regards clubs and societies generally, not engaged in trade or in any pursuit having gain for its object and having no realised property whatever and no income except that derived from the subscriptions of their members, which subscriptions are expended for the purpose of the club or society to which they are made, I am to explain that such institutions are not liable to income tax in respect of such subscriptions which are not in reality income or profits, but represent the expenditure of the members of the particular club or society for their common purposes. This principle, however, does not apply in the case of a proprietary club which is usually maintained for the purpose of producing an income to the proprietors. The income of such a club would therefore be taxable. The value of any houses of which any club is the occupying owner is also taxable.

No. 267 (Rev.), dated 20th April 1894.

From—The Honourable Mr. E. GIBSON, Acting Secretary to the Government of Madras,

To—The Secretary to the Government of India, Finance and Commerce Department.

Adverting to paragraph 5 of Mr. Finlay's letter, dated 26th January 1894, No. 385-S.R., I am directed to state that His Excellency the Governor in Council entirely concurs in the view therein expressed and considers that the Jagath Guru of the Sringari Mutt in Mysore should be exempted from payment of income tax. I am to request that the final orders of the Government of India on the subject may be communicated to this Government at an early date.

2. With reference to the ruling in paragraph 3 of the letter under reply, *viz.*, that the words "solely employed for religious or public charitable purposes" in Section 5 (1) (*e*) of the Income Tax Act qualify the word "property" and not the word "income," I am to say that this Government is still in doubt as to what should be done in the case of a temple owning property such as lands, buildings, &c., from which it derives an income, but which property is not solely employed for religious or public charitable purposes. Under the above ruling it would seem that such income, though it may be devoted to religious or public charitable purposes, is liable to income tax, and I am to enquire whether the Government of Madras has correctly apprehended the instructions of the Government of India. For instance, a temple is the owner of a ferry, and devotes the receipts therefrom to religious purposes. In this case it is clear that it is the income and not the property which is "solely employed," &c. Under the above ruling the receipts from the ferry would be liable to income tax, as they are derived from property which is not employed for religious purposes. But as His Excellency the Governor in Council believes that such is not the intention of the Government of India, he would suggest that Section 5 (1) (*e*) of the Income Tax Act should be altered to run in either of the following ways :—

"Income derived from property *and which* is solely employed, &c.," or

"Income which is solely employed, &c."

No. 1082- S.-R., dated 5th March 1895.

From—G. H. R. HART, Esq., Officiating Assistant Secretary to the Government of India, Finance and Commerce Department,

To—The Secretary to the Government of Madras, Revenue Department.

I am directed to acknowledge the receipt of your letter No. 267, dated the 20th April 1894, and to say that the Governor General in Council is pleased to authorize the exemption of the Jagath Guru of the Singari Mutt in Mysore from the payment of income tax.

2. As regards the questions raised in paragraph 2 of your letter, I am to say that it does not seem desirable to attempt to give an exhaustive definition of the expression, "solely employed for religious or public charitable purposes," in Section 5 (1) (*e*) of Act II of 1886, but that property (1) which is occupied exclusively for religious or public charitable purposes, or (2) the rent of which is employed exclusively for such purposes—not as a mere voluntary dedication, but under some trust or legal obligation—is, in the opinion of the Government of India, property "solely employed" for such purposes. As regards the particular case of the ferry referred to in your letter, I am to add that if such ferry were let to a tenant, and the rent received were applicable only to religious uses, such rent would in the hands of the temple as owner be income derived from property solely employed for religious purposes, but the fees received by the tenant from working the ferry as a business would be profits of the business and taxable as such under Act II of 1886, and that if, instead of letting out the ferry, the temple authorities were to attempt to work it for profit themselves, they should be considered as embarking on a secular business and liable to taxation accordingly.

(G. I., F. & C., No. 2064-S. R., dated 2nd May 1895; *vide* G. R. No. 1697, dated 23rd idem.)

50. The opinion of the Honourable the Advocate General, contained in the following correspondence, on the question of liability to income tax of income earned and received in a Native State but brought or remitted into British India, should be acted upon :—

No. 3511-S. R., dated 24th July 1895.

From—J. E. O'CONOR, Esq., C.I.E., Assistant Secretary to the Government of India, Finance and Commerce Department;

To—The Solicitor to the Government of India.

I am directed to request that you will lay before the Honourable the Advocate General, Bengal, for his opinion, the following statement of a case which has arisen regarding the levy of income tax on the salary and fees received by the Honourable Mr. P. M. Mehta in the Junágad State.

Mr. Mehta holds the appointment of Judicial Adviser to the Junágad State or some appointment of that nature, and is paid a fixed salary in respect of such appointment by the Junágad State. Mr. Mehta has a family residence in Bombay, his family reside there, and his salary after payment of it to him at Junágad is from time to time brought by him to Bombay. It appears that during Mr. Mehta's absence from the State no payment of salary is made to him, but that his salary is allowed to accumulate at Junágad until it suits him to go there when it is paid to him and the whole or part of it is brought back to Bombay with him. Mr. Mehta disputes his liability to pay income tax in respect of the salary while the Income Tax Collector claims to tax it.

The Honourable the Advocate General should be referred to Section 3 of the Income Tax Act, II of 1886, sub-section (5) and to the second schedule to the Act, and his opinion should be requested whether the salary or portion of it so paid in Junágad and brought to Bombay is assessable to income tax.

2. A question has also arisen whether when a barrister, whose residence is in Bombay, earns fees by occasional practice in Native States, and such fees are paid in the Native States, but brought or remitted to Bombay so as to form part of general funds there, the fees are liable to be charged with income tax.

It has been ascertained that the practice regarding the levy of income tax in such cases has not been uniform; and I am to request that you will obtain and furnish to the Government of India the opinion of the Honourable the Advocate General on the question.

No. 642, dated 30th July 1895.

From—W. K. EDDIS, Esq., Solicitor to the Government of India;

To—The Secretary to the Government of India, Finance and Commerce Department.

Referring to your No. 3511-S.R. of the 21st (? 24th) instant, I have the honour to forward herewith copies of the questions submitted to the Honourable the Officiating Advocate General and his opinion thereon :—.

Questions submitted to the Honourable the Officiating Advocate General for his opinion.	*Opinion of the Honourable the Officiating Advocate General.*
(1) Whether, under the circumstances stated, the levy of income tax on the salary and fees received by the Honourable Mr. P. M. Mehta in the Junágad State can be upheld?	(1) and (2) I am of opinion that inasmuch as the salary and fees paid to the Honourable Mr. P. M. Mehta are earned by and paid to him in the Junágad State, outside British India, they cannot be said to be income on (? or) profits accruing and arising or received in British India within the meaning of Section 3 (5) of Act II of 1886, and therefore income tax cannot be levied on them as insisted upon by Mr. Mehta.
(2) Whether, having regard to Section 3 of the Income Tax Act, II of 1886, Sub-section (5) and to the second schedule to the Act, the salary or portion of it so paid in Junágad and brought to Bombay is assessable to income tax or not?	
(3) Whether, when a barrister whose residence is in Bombay earns fees by occasional practice in Native States, and such fees are paid in the Native States, but brought or remitted to Bombay, so as to form part of general funds there, the fees are liable to be charged with income tax?	(3) If the fees in question are earned by and paid to the barrister in Native States outside British India, they are not assessable for income tax, for the reasons given in my answers to the previous question.
(4) And generally, as to the question raised in the letter now sent.	(4) Generally. The law being clear, the practice should also be uniform, and no income tax can legally be levied in respect of such fees.

(G. I., F. & C., No. 4180-S. R., dated 3rd September 1895; *vide* G. R. No. 3295, dated 25th idem.)

51. The following correspondence on the same question has been circulated to all Income Tax Officers for information and guidance in continuation of Government Resolution No. 3295, dated 25th September 1895:—

No. 92-T.F., dated the 19th May 1896.

From—The Honourable H. H. RISLEY, C.I.E., Secretary to the Government of Bengal, Financial Department,

To—The Secretary to the Government of India, Finance and Commerce Department.

With reference to your letter No. 4180-S. R., dated the 3rd September 1895, and enclosure, communicating the opinion of the Honourable the Advocate General on the question of the liability to income tax of income earned and received in a Native State but brought or remitted

into British India, I am directed to submit, for the information of the Government of India, the accompanying copy of a letter from the Board of Revenue, No. 324-R., dated the 14th April 1896, together with a copy of the opinion expressed by the Advocate General on the point raised by the Board.

No. 324-B., dated the 14th April 1896.

From—The Officiating Secretary to the Board of Revenue, Lower Provinces,

To—The Secretary to the Government of Bengal, Financial Department.

With reference to Government Order No. 429-T.F., dated the 18th September last, forwarding copy of papers containing the opinion of the Advocate General on the question of liability to income tax of income earned and received in a Native State but brought or remitted subsequently into British India, I am directed to submit the following for the consideration and orders of Government.

2. In 1894 a question was raised by the Commissioner of the Dacca Division as to whether the income accruing to a resident of the Dacca District from his business in Kuch Bihar was liable to taxation. It was held by the Board that if the assessee received the income in British India, that is, if it was remitted to him in British India, he was liable to income tax in respect of it. This ruling has been observed in Dacca, but the Commissioner in a recent reference has brought to notice that it is hardly in accordance with the opinion of the Advocate General above referred to.

3. The Advocate-General's opinion seems in Mr. Grimley's opinion only to cover the case of salary and fees earned and paid in foreign territory, and is doubtless correct, as such salary and fees can scarcely be said to have been received in British India, but the case of income derived from trade is different where the head house is in British territory and a business is carried on in Native territory by a branch house or by an Agent, the profits being remitted from time to time to the head house. Mr. Grimley has had several cases of this kind in Chota Nágpur which is surrounded by Native States and has invariably decided that the income received by a firm in British territory is liable, although it may have been earned in Native State.

4. In this connection I am to invite the attention of Government to Financial Department Order No. 12370, dated the 21st December 1860, given as Note I to Section 3 (5), page 3 of the Income Tax Manual, and to enquire whether Mr. Grimley is right in restricting the ruling founded on the Advocate-General's opinion to salary and fees earned and paid in a Native State, and in deeming it not applicable to trade profits earned in a Native State but forwarded to the head firm in British territory.

Opinion.

I am of opinion that Mr. Grimley is right in distinguishing the ruling founded on the Officiating Advocate-General's opinion as applicable only to salary and fees earned and paid in a Native State and in deeming it not applicable to income earned in a Native State but forwarded to a person in British India. In the case of a remittance from a Native State to a person in British India, the income is clearly received in British India within the meaning of Section 3 (5) of Act II of 1886.

(Resn. of the G. of I. No. 2460-S. R., dated 12th August 1896; G. R. No. 2215, dated 4th January 1896.)

52. Fees or honoraria paid by Government to Examiners for conducting examinations cannot be regarded as a salary or gratuity and taxed as such under Part I of Schedule II of the Act unless it is actually part of the officer's recognised duty to conduct such examinations. If it is not part of his duty, and if he is simply invited to do certain work which might equally well be done by a non-official on similar invitation, the fee which he receives is 'income,' not salary, and the disbursing officer is not concerned with the recovery of income tax on the amount. (G. of I. Resn. No. 2268-S.R., dated 26th May 1896; G. R. No. 2005, dated 12th June 1896.)

53. The following opinion is expressed by the Honourable the Advocate General, Bombay, on the question whether the amount received by a person as compensation for bodily injuries sustained by him is liable to income tax or not:—

"I think that the sum of Rs. 1,000 paid to Mr. —— as compensation for the injuries he received is not a gratuity wthin the meaning of Section 3 (5) of Act II of 1886. Gratuity means 'free gift,' and although there may not have been any legal obligation upon Government to make the payment, it was made in consideration of the injuries Mr. —— received in the performance of his duty and cannot properly, I think, be considered as a gratuity liable to income tax. I also think it cannot be taxed as part of Mr. ——'s income or profits.

"I think the compensation paid to a passenger by a Railway Company for injuries received while travelling is not liable to income tax. The amount of such compensation is not received as income or profits, nor as a gratuity. It is a sum which the Railway Company are legally bound to pay and is in the nature of a payment on capital account, the object being to compensate the recipient during the remainder of his life for the injuries he has received."

(G. R. No. 5246, dated 14th December 1897.)

PART II.—EXEMPTIONS, REMISSIONS AND REFUNDS.

1. The proceeds of the sale of ghee, if it comes under produce as defined in Section 5 (*b*) (III) of the Act, are exempt from payment of the tax.

As to the question whether the rent of a house in which a cultivator resides, or which is kept apart for his cattle, should be deemed a source of income and assessed, the terms of Section 5 (1) (*c*) are quite clear. If the cultivator has a house which he requires as a dwelling-house, &c., in the village in which he cultivates land it would be exempt.

The salary paid by a Native State to a resident of British India who is in service out of British India is exempt.

Income from whatever source is exempt if it is solely employed for religious purposes. The source from which the income is derived is not material.

(G. R. No. 964, dated 3rd April 1886.)

2. Salaries paid to British subjects in the service of Native States by those States are not liable to the tax. (G. R. No. 990, dated 6th April 1886.)

3. Forest lands, on which quit-rent is paid, may be regarded as land used for agricultural purposes and the income derived therefrom exempted from the payment of income tax. (G. R. No. 2398, dated 10th August 1886.)

4. On the analogy of Government Resolution No. 2398, dated 10th August 1886, income tax should not be levied on the Inámdár's share of forest income in a Sharákati village, the forest of which is under the management of the Forest Department, a moiety of the net income realized, when forest compartments are sold, being paid to the Inámdár after deducting quit-rent. (G. R. No. 3495, dated 10th October 1895.)

5. The wife of a European British subject in Government service whose salary is taxed under Part I, who holds securities in her own name and has her separate property, the interest on which does not reach Rs. 500 per annum, and who has no other income, is entitled to a certificate of exemption under Schedule II, Part III. (Adv. Gen., No. 29, dated 12th June 1886; *vide* G. R. No. 1814, dated 24th idem.)

6. The Income Tax Act does not require applications for certificates of exemption under Part III of Schedule II, and Clause (*e*), paragraph 1 of Section 5, to be verified by the assessee, or even allow them to be verified. They differ from petitions of objections under Section 25, nor do they come under the head of declarations under Section 18-2. (G. R. No. 2197, dated 26th July 1886.)

7. Amals unquestionably consist of 'revenue derived from land,' and on the principle that enactments which impose taxes must be liberally construed in favour of the subject, it must be held

that such income falls within the exemption specified in Section 5 (*a*) of the Income Tax Act.

For the same reasons cash assignments from Land Revenue such as the Bábti, Mokása, and Sáhotra in the Deccan are also exempt. (L. R. Nos. 1526, dated 30th November 1886, and 1625, dated 17th December 1886; *vide* G. Rs. Nos. 3857, dated 20th idem, and 113, dated 11th January 1887.)

8. Foreign Consuls residing in India are exempted from the payment of Indian income tax on their official salaries and fees. (G. I., F. & C., Nos. 2478, dated 12th May 1887, and 4162, dated 5th August 1887; *vide* G. Rs. Nos. 1321, dated 28th May 1887, and 2183, dated 15th August 1887.)

9. The following opinion (No. 34, dated 26th November 1887) of the Honourable the Advocate General was communicated to all Income Tax Collectors for information and guidance :—

"I think that the portion of the income of the Goculdás Tejpal Charities employed for religious or public charitable purposes in Cutch is entitled to be exempted from income tax under Section (5) (*e*) of Act II of 1886. That clause does not limit the charities which are to have the benefit of the exemption therein contained to charities within British India; and I do not think it possible to infer such a limit from the words in Section 1 declaring that the Act extends to the whole of British India.

"The exemption in Section 5 (*e*) is expressed in vague and wide words, and possibly covers many cases which have no special claim to be exonerated from the tax, a remark which does not apply to the charities now in question; but if its operation is to be limited, it must be by the Legislature."

(G. R. No. 3346, dated 12th December 1887.)

10. The deduction of the amount of premium paid to a Life Insurance Company should be made in one sum from the salary bill to which the receipt for the premium is attached. (G. I., F. & C., No. 902, dated 25th May 1886; *vide* G. R. No. 1636, dated 8th June 1886.)

11. Subscriptions paid in cash to the Bombay Uncovenanted Service Family Pension Fund may, on production of the receipt of the Fund, be deducted from the amount of salary liable to the tax under Act II of 1886. A copy of the receipt should also be submitted to be retained with the salary bill. (G. I., F. & C., No. 2625, dated 19th August 1886; *vide* G. R. No. 2663, dated 1st September 1886.)

12. In regard to claims to exemption, under Section 5 (1) (*g*) of Act II of 1886, of such portions of incomes taxable under Part IV of Schedule II of the Act, as are paid as premia to an Insurance Company (including subscriptions, &c., which are exempted from taxation, as if so paid), exemption should be granted only in respect of premia paid during the year upon the income accruing in which the tax is assessed under Section 15 of the Act. (G. I., F. & C., No. 1710, dated 30th March 1888; *vide* G. R. No. 1033, dated 17th April 1888.)

13. Income tax should not be levied on the discount allowed to Postal officials for the sale of stamps. This order should be held to apply to commission on all stamps sold by Postal officials *ex-officio*, but not to discount on stamps sold by them as ordinary licensed-vendors. (G. I., F. & C., No. 73, dated 7th January 1890; *vide* G. R. No. 335, dated 1st February 1890.)

14. The Collector of Income Tax, Bombay, should minimize the delay incidental to his furnishing the certificates regarding the exemption from payment of the tax on Government securities held by the Administrator General and Official Trustee, and to this end the Administrator General and Official Trustee should supply him with two copies of his lists of such securities. (G. R. No. 345, dated 1st February 1890.)

15. The allowances granted to officers of the British service by Article 769, Army Regulations, India, Vol. I, Part I, are exempted from income tax. (G. I., M. D., No. 800-F., dated 28th February 1893; *vide* G. R., M. D., No. 501, dated 13th March 1893, and G. M. No. 1443, dated 12th April 1893.)

16. The members of a library the income of which is devoted to the supply of books, magazines and newspapers to be read by the subscribers, may fairly be said to be an 'Association existing solely for educational purposes' within the meaning of the Notification of the Government of India No. 676,* dated 8th February 1888. (L. R. No. 1384, dated 20th August 1891; *vide* G. R. No. 3138, dated 10th September 1891.)

17. There is nothing in the Income Tax Act or in Rule 10† of the Rules in the Notification of the Government of India No. 593, dated 5th February 1886, which limits the certificate referred to in that rule to any particular period. If the securities are solely employed for religious or public charitable purposes, all the interest due in respect of them is exempt from income tax.

The exemption arises when the interest is drawn as income, whether such interest is for the current year, for last year, or a previous one. The Governor in Council cannot see any justice in withholding a certificate merely because a loan note holder has forborne to draw the interest for a few years. If it was all along exempt, it remains exempt. (Adv. Genl. No. 93, dated 12th September 1891, and G. R. No. 198, dated 14th January 1892.)

18. Employés of Railway Companies (not State Railways) who actually serve, reside and draw their

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* Superseded by G. I., F. & C., Notification No. 2762, dated 6th June 1890; *vide* G. N. No. 2022, dated 11th idem.

† *Vide* Rule 10 of the rules published under G. I., F. & C., Notification No. 2763, dated 6th June 1890 (G. N. No. 2022, dated 11th idem) which superseded G. I. Notification No. 593, dated 5th February 1886.

pay in Native States should be exempted from the operation of the Income Tax Act." (G. I., For. Dept., No. 1587-I, dated 11th May 1894; *vide* G. R., P. D., No. 3628, dated 16th June 1894, and G. M. No. 2117, dated 27th idem.)

19. Income tax is not leviable in the case of the employés of the G. I. P. Railway Company employed on the line running through the Berárs and the Nizám's Dominions. (G. R. No. 3170, dated 20th September 1890.)

20. It has been considered undesirable to bring the Income Tax Act into force in the portions of the G. I. P. Railway which run through Berár and the Hyderabad State. (G. I., F. & C., No. 2164, dated 21st May 1891; *vide* G. R. No. 2447, dated 10th July 1891.)

21. The ruling contained in Government Resolution No. 2187, dated 26th May 1892, is extended to all lines in foreign territory which have not been made British territory as by Bombay Act I of 1862. (G. R., P. D., No. 5077, dated 6th August 1892; *vide* G. N. No. 3516, dated 31st idem.)

22. Railway servants employed on portions of the B. B. and C. I. Railway, including Rájputáná-Málwa Railway, passing through other than British territory and on the eastern section of the Godhra-Rutlam Railway are not liable to income tax. This opinion does not apply to persons employed on the portions of the line which have been made British territory such as those mentioned in Bombay Act I of 1862. (Adv. Genl. No. 111, dated 7th December 1891; *vide* G. R. No. 2187, dated 26th May 1892.)

23. Questions having been raised whether those employés of the Bengal-Nágpur Railway Company who reside in a Native State, but whose districts extend into British territory and who may not always actually receive their pay at their place of residence, are exempt from the payment of income tax, and whether those employés of that Company who serve, reside and draw their pay in Native territory are exempt from the operation of the Income Tax Act, the Government of India have ruled that employés, whose head-quarters are in British India, are not exempted from income tax, even though part of their work may lie in Native territory, and it should be collected from such persons, and that those employés, however, whose head-quarters are in Native territory, are exempted from the tax, even though part of their work should lie in British territory. (G. I., P. W. D., No. 3824-G., dated 28th December 1894; *vide* G. R. No. 633, dated 21st February 1895.)

24. The tax on income accruing from the Káthiáwár States of the Tálukdárs in the Dhandhuka Táluka, paying peshkashi to Government should be remitted. (G. R. No. 1709, dated 6th July 1887.)

25. The Government of Bombay is authorized to deal, without reference to the Government of India, with cases of refunds to Railway Companies of overpayments of income tax. (G. R. No. 2, dated 3rd January 1891.)

26. It is not considered expedient to frame any formal rule prescribing a limit of time within which after the close of the financial year a person whose monthly salary is Rs. $\frac{500}{12}$ or more, but whose total income in the year from all sources is, owing to absence on leave or degradation to a lower post, less than Rs. 500 for the year, should apply for the refund of income tax deducted from his monthly salary. Each case should be dealt with as it arises, the claim for refund being admitted if good cause is shown on the merits. (G. I., F. & C., No. 193-S. R., dated 13th January 1894; *vide* G. R. No. 401, dated 30th idem.)

27. There is nothing in Part III of Schedule II (or in Part I for that matter) which precludes a Collector from at any time granting a refund of tax levied on income not liable to tax—no matter when application for a refund certificate is made. As regards the question of the period within which applications for refunds of the tax levied under Parts I and III of Schedule II of the Income Tax Act can be entertained, the preamble of Government Resolution No. 401, dated 30th January 1894, shows that the Government of India has declined in the case of refunds of tax levied under Part I to frame a formal rule prescribing a limitation of time, and directed that each case should be dealt with as it arises, the claim for refund being admitted, if good cause is shown, on the merits. This ruling should presumably govern also cases of refunds of tax levied under Part III. (G. R. No. 776, dated 18th February 1898.)

28. In exercise of the power conferred by Section 6 of Act II of 1886, the Governor General in Council is pleased to exempt from liability to the tax payable under that Act the salary of any officer, warrant officer, non-commissioned officer or private of Her Majesty's forces or of Her Majesty's Indian forces, who has been, or may be, deputed from employment in which his salary was exempted under Section 5 (1) (*i*) of the said Act to plague or famine duty under the Civil Department and whose salary does not exceed five hundred rupees per mensem. (G. of I. Notn. No. 4812-S.R., dated 3rd November 1898; G. Notn. No. 5142, dated 9th idem.)

PART III.—ASSESSMENT, COLLECTION, RECOVERY, &c.

1. Income tax under Part IV should in Aden be paid in one payment on 1st July.

The provisions of clauses (*a*) and (*b*) of Section 18 (1) should be made applicable to Aden. Resort to composition should be sparingly had, and the same limit in respect to minimum incomes for which payment of tax may be compounded for should be fixed for Aden as in Bombay, namely, Rs. 10,000 per annum, assessable under Part IV of Schedule II of the Act.

The list mentioned in clause (5), Section 16, of the Income Tax Act should be published in Aden by leaving copies of the list at the principal Police stations, and attention of the assessees in general should be drawn thereto by beat of tom-tom within the Settlement every other day during the time fixed in the list.

There is no need for any special order under Section 30. If a person makes default in the payment of the tax, the Collector can take action under clause (3) of Section 30.

(G. R. No. 784, dated 19th March 1886.)

2. The terms of Section 18 of Act II of 1886—"in any special town or place"—do not allow of a general notice to be issued under it to whole districts. If any Collector after full consideration thinks that Section 18 (1) (*b*) will be usefully applied to any town or place he should make a special application.

Under Section 18 (1) (*a*) the Collectors may be authorized to use Section 17 instead of Section 16 in the case of any person to whose condition the procedure under Section 17 seems more suitable than that under Section 16. Publication of names under Section 16 should not, however, be treated as a disgrace.

The Collectors will naturally make three lists, *viz.*, one under Section 16, one of persons served with notices under Section 17, and one of persons who make returns accepted under Section 18 (1) (*b*) if any.

The lists under Section 16 should obviously be prepared and published each year on April 1st.

The lists should be published in their entirety at the Collectors' offices. Táluka lists should be published at Mámlatdárs' and Mahál kacheris, and village lists in village chávdis. In municipal towns, ward lists should be published in the wards. The date prescribed for payment of the tax and the penalties for non-payment, &c., should also be notified, and attention to the duties of tax-payers invited by tom-tom.

Collectors may take any precautions for making the liabilities of tax-payers public which they think proper and which will not cause large expense.

The tax may be allowed to be paid in two instalments when the annual income is assessed at Rs. 2,000 or upwards, an interval of not more than six months being allowed between the instalments. The first instalment, or where the tax is payable in one sum, the whole sum, should be paid within sixty days from the date of publication of the list under Section 16 and date of notice under Section 17, or from the date of issue of notice of acceptance of return as correct under Section 18 (1) (*b*) or date of agreement under Section 31. The second instalment should be paid not more than six months after the date fixed for the payment of the first instalment, nor less than two months before the end of the year.

The provisions of the Land Revenue Code are sufficient for the recovery of arrears. These orders are applicable to the Presidency proper as well as to the Province of Sind.

(G. Rs. Nos. 916, dated 31st March 1886, and 1215, dated 30th April 1886.)

3. The provisions of Section 18 (1) (*b*) of the Income Tax Act, II of 1886, should be applied to the towns and cantonments of Karáchi and Hyderabad. (G. R. No. 1215, dated 30th April 1886.)

4. The provisions of Section 18, clause (1) (*b*), of the Income Tax Act, II of 1886, should be applied to the town of Betigeri in the Gadag Táluka of the Dhárwár District. (G. R. No. 1521, dated 31st May 1886.)

5. The provisions of Section 18 (1) (*b*) of the Income Tax Act, II of 1886, should be applied to the town and cantonment of Jacobabad. (G. R. No. 1581, dated 3rd June 1886.)

6. The provisions of Section 18 (1) (*b*) of the Income Tax Act should be applied to the towns of Sukkur and Shikárpur. The period within which the return required by Section 18 (1) (*b*) should be furnished by persons invited to make it, should be fixed, as in Bombay and Aden, at one week from the date of service of the notice. (G. R. No. 1861, dated 29th June 1886.)

7. The Act precludes the service of special notices under clause (*c*) of Sub-section 1, Section 18, in such places as Allahabad, Cawnpore and Lucknow; and it is inexpedient to amend the Act so as to allow of the issue of such notices in places other than Presidency towns. The provisions of the clause were specially considered by the Select Committee. There is, however, nothing to prevent a general notice under Section 18 (1) (*b*) being served as well as published, a copy of the published general notice being sent to such persons as the Local Government or the Collector may consider it desirable to treat in this way. (G. I., F. & C., No. 958, dated 22nd May 1886; *vide* G. R. No. 1733, dated 17th June 1886.)

8. The words used in Section 18 (1), (*b*) and (*c*) of the Income Tax Act empower the Collector to

require any person who thinks fit to deliver a return of his income under those clauses to set forth in that return the source and amount of his income under Parts I, II and III, as well as under Part IV. (G. I., F. & C., No. 1740, dated 3rd July 1886; *vide* G. R. No. 2108, dated 19th idem.)

9. Officers whose duty it is to assess persons to the income tax may be authorized to avail themselves, at their discretion, of the assistance of a Panch when such aid will be trustworthy and useful.

In the case of a Government servant whose annual income is more than Rs. 500, and whose other income amounts to Rs. 1,500, the salary and the other income should be taxed separately under Part I and Part IV of the second schedule at the rate appropriate to the amount of income under each part.

A company is taxed on net profits, and a single trader should be dealt with in a similar way. Income in Part IV of the second schedule must mean, in case of income from business, a net receipt, *i.e.*, what remains after deducting from the gross receipt the money spent in obtaining it.

If a Jághírdár or Inámdár mortgages his village or leases it in satisfaction of his debt and the mortgagee manages the villages, the income derived from such source is assessable as part of the profits of the sávkár's business.

(G. R. No. 964, dated 3rd April 1886.)

10. A compositor paid by the piece does not receive a fixed salary or any salary at all, and his wages do not come within the definition of salary. He should be assessed under Part IV or exempted under Section 5 (*j*) according to the amount of his receipts. (G. R. No. 996, dated 7th April 1886.)

11. The amount paid by a Sub-Registrar to his Kárkún out of his fees should be deducted from the taxable amount and only the net income from fees should be assessed. (G. R. No. 1149, dated 21st April 1886.)

12. Ground-rent or land revenue, cost of repairs and tile turning, &c., should be deducted from the gross rent which a landlord derives from his houses. The income to be taxed is the net income, *i.e.*, what remains after deducting from the gross receipt the money spent in obtaining it. Land revenue, although in some senses a tax, is in such cases the price paid for the usufruct of the ground. Income derived from a business which a resident of a Native State comes into British India and transacts is liable to be taxed, notwithstanding that such person's abode is not in British India. Recovery of the tax from any such person can only be effected, if he fails to pay the same, by some one of the means prescribed in Section 30 of the Act. If the defaulter is found in British India, there will be no difficulty in having resort to some of those means.

The income of every Hindu undivided family living in British India is subject to the provisions

of the Act, wherever that income may be derived from. If some of its members are abroad and send contributions to the general purse, their contributions should be counted as part of the family's income. If their earnings abroad are in the shape of salaries, annuities or pensions paid by Native States, they will not be taxable under Part I of the second schedule, because that part only applies to salaries, &c., paid in British India and to salaries paid in Native States by Government; nor will their salaries, &c., be assessable under the Act at all as such, but their contributions to the common purse of the undivided family will be assessable as 'other sources' of the family's income under Part IV of the schedule.

(L. R. No. 479, dated 14th April 1886; *vide* G. R. No. 1237, dated 3rd May 1886.)

13. On a question having been raised by the Accountant General, Bengal, whether, for the purposes of assessment, the commission which is paid twice a year to zilladárs and certain other amlah of the Opium Department, and without which their salaries would not become liable to the tax, should be considered with reference to the month in which the commission is declared, or distributed in six equal portions over the months for which it is declared, and then added to the salary, the Government of India have ruled that the tax should be levied with reference to the salary drawn in each month; that is to say, the tax in the case referred to should be levied on the salary *plus* the commission paid to the employés of the Opium Department in the month in which the commission is paid, and no account taken of the commission in other months (G. I., F. & C., No. 391, dated 26th April 1886; *vide* G. R. No. 1309, dated 11th May 1886.)

14. A man owns a house, which he uses as his residence, and which, if let to a tenant, will yield a monthly rent of Rs. 60—five-sixths of which is Rs. 50 monthly or annually Rs. 600 under Section 24 of the Act. He also lets out for hire carriages which give an annual income of Rs. 500. The aggregate annual income of the occupying owner of the house derived from *all* sources will thus be Rs. 1,100, *i. e.*, Rs. 600 + 500. The 10 per cent. of this under Rule 6 of the Rules* circulated with Government Resolution No. 350, dated 12th February 1886, is Rs. 110 and the total assessable income will amount to Rs. 610 *i. e.*, 500 + 100. (G. R. No. 1312, dated 11th May 1886.)

15. Rule 6 above referred to simply lays down the maximum amount to be assessed under Section 24, Sub-section I. If the $\frac{5}{6}$ths of the actual letting value of the building be less than $\frac{1}{10}$th of the income from all sources, such $\frac{5}{6}$ths alone are to be taken into consideration in calculating the assessment under Section 24, Sub-section I. (G. R., No. 2194, dated 26th July 1886.)

* *Vide* Rule 7 of the rules published under Government of India Notification No. 2763, dated 6th June 1890, which superseded the rules of 1886.

16. Information regarding the amount of interest payable on deposits in the Post Office Savings Bank can no more be required by Income Tax Collectors for the purpose of making their original assessments, than similar information can be demanded from private banks.

The law for both cases is the same. The Collector may invite any person chargeable with income tax under Part IV of the second schedule to make a return of his income in any case to which clause (*b*) or clause (*c*) of Section 18 of the Act applies, but if that invitation is not responded to, and in any case to which clause (*b*) and clause (*c*) of Section 18 are inapplicable, he must form his own estimate of the person's income. Evidence can only be taken, under Section 28 of the Act, if any person assessed applies to have his assessment revised.

(L. R. No 682, dated 5th June 1886 ; *vide* G. R. No. 1748, dated 18th June 1886.)

17. In the case of servants whose services are lent to a Court of Wards or public bodies, the tax is to be levied on the net and not on the gross salary (G. I., F. & C., No. 1266, dated 9th June 1886 ; *vide* G. R. No. 1861, dated 29th idem.)

18. The Government of India does not anticipate any such difficulty in ascertaining the head-quarters of companies or firms carrying on business in more than one province as will necessitate the framing of rules. The Local Governments concerned should arrange between them what place should be considered as the head-quarters of the company or firm, and in what province the assessment should be made. In most cases there will be no doubt, and in the rare cases in which such mutual arrangement is impossible, a reference should be made to the Government of India. (G. I., F. & C., No. 958, dated 22nd May 1886 ; *vide* G. R. No. 1733, dated 17th June 1886.)

19. When the License Act was in force, merchants having their principal place of business in Bombay and subsidiary branches outside the Presidency were granted certificates showing that the persons holding them had paid at the head office a tax for all their places of business, and that they were not liable to any further taxation. Similar certificates granted to the tax-payers in the other Provinces were accepted in this Presidency. This practice of granting and acting upon certificates of the nature above mentioned may be followed in regard to tax-payers under Act II of 1886 having their places of business in territories subject to different Local Governments, it being left to the Income Tax Collector to obtain the orders of Government when any doubt arises as to the principal place of business of any person assessed to the tax, in which case the necessary arrangement will be made with the Local Government concerned. (G. R. No. 2383, dated 9th August 1886.)

20. For all firms who have places of business in Karáchi and also elsewhere in the Province of Sind, and whose principal place of business is not decided to be Bombay or elsewhere outside the Province, Karáchi should be deemed the principal place of business. (G. R. No. 1441, dated 7th June 1887.)

21. Assessees should not be allowed an indefinite time for making known that their business at a certain place has been taxed elsewhere. Assessees who give notice of intention to produce certificates are in reality objecting to the assessment and should be subject to the same rules of limitation as ordinary appellants. On receipt of their objection the officer authorized to hear appeals could fix a reasonable time for production of the certificate, and the matter could be disposed of in the same way as any other appeal. Petitions to file certificates would thus not be accepted after the period of appeal has expired. (G. R. No. 1390, dated 9th May 1888.)

22. As a general rule the assessment under the Income Tax Act of a firm having several places of business should be settled in consultation with the local officers, though of course cases may arise in which the adoption of such a course is obviously not requisite, and in such cases no reference to local officers need be made. (G. R. No. 4194, dated 6th October 1889.)

23. The following instructions have been laid down under Section 47 of the Income Tax Act of 1886 :—

1. If a trading establishment have several places of business within the Bombay Presidency, the Collectors of the districts concerned shall settle each year before the end of March, and in communication with each other, the place of business which for the purposes of assessment shall be considered the principal one. In case of disagreement, the question shall be referred for decision first to the Revenue Collectors of the Districts, and if they disagree, to the Local Government.

2. The Collector of the place which has been settled to be the principal one, as above mentioned, shall ascertain or estimate, on the best information he can obtain, the amount assessable, either as accruing in that place, or remitted from branch establishments. He shall obtain also, from the Collectors of the places where the branches aforesaid may be situated, corresponding return (specifying the sources of information) of the total assessable income of the branch, stating, too, whether by their agreement, the head establishment receives the whole, or only a defined share of the profits, and if the latter, then what is the amount remitted. These reports must be sent in by the 10th of April every year, and no assessment shall be acted on at a head establishment until they have been duly recorded and considered. If, by chance, fresh branches or agencies are

discovered during the year of assessment, a similar report should be at once sent in regarding them.

3. Upon receipt of the full information as above specified, the Collector at the head place of business shall make the assessment, and in the certificate to be given under Section 47 (Form 15), he shall enter full particulars of the names and localities of the branch establishments included in the assessment, with the amount of the profit received at or from each, whereever such is separately estimated or ascertained. In case of only a share of the profits of the branch reaching the head establishment, it shall be clearly set down that this portion only has been taxed at the head office, and that the remainder is to be dealt with at the place where the branch carries on its business.

4. Where business is carried on in places under different Local Governments, the Collector of any such place in the Bombay Presidency should in the first place communicate as above with the corresponding officer at places beyond that Presidency where the business in question may be established. If an agreement as to the assessment be not reached by this means before the 10th April, application shall be made to the Local Government for the action prescribed in Resolution No. 1733 of the 17th June 1886. Certificates received prior to settlement shall not, unless otherwise deemed trustworthy and sufficient by the Collector concerned, be accepted under the section above quoted.

(G. Rs. Nos. 1284, dated 20th May 1887, and 2009, dated 15th June 1894).

24. Income tax assessees who have several places of business and are likely to produce certificates of payment at the principal place of business under Section 47 of the Act should not be included in the assessment lists submitted to Government.* This order is not intended to divest the Income Tax Collectors of the power of supervising the assessments of persons having several places of business. The mere omission of the name of an assessee from the list of assessments submitted for sanction does not exempt him from assessment in that year as a matter of course. The lists submitted must be complete and thorough as far as practicable, but there is no bar to a Collector making further assessments or modifying the year's assessments in the light of information casually obtained. A separate list of assessees likely to produce certificates of payment under Section 47 is convenient and free from the objection of showing the assessments twice over in lists for different places. Persons likely to produce such certificates should accordingly be entered in a separate list and proceeded against if certificates are not received by the 15th of January every year. (G. Rs. Nos. 2086, dated 12th June 1891, and 1304, dated 22nd March 1892.)

* Now submitted to Commissioners.

25. For the purposes of Act II of 1886 Calcutta is the principal place of business of the British India Steam Navigation Company. (G. I., F. & C., No. 3352, dated 27th September 1886; *vide* G. R. No. 3093, dated 12th October 1886).

26. The attention of Commissioners and Collectors is called to the liability of pensions and grants or cash allowances to income tax under Part IV as income received in British India, if they are not exempt under any section of the Income Tax Act II of 1886. (G. R. No. 1369, dated 14th May 1886.)

27. The views expressed by Mr. J. A. Baines, C. S., on special duty for purposes of the income tax, in the following extract paragraphs 2 and 3 of his letter No. 89, dated 2nd September 1886, were approved by Government:—

"2. It appears to me that cash allowances of the nature of those mentioned in the preamble of the above-mentioned Resolution No. 1369 dated 14th May 1886, are undoubtedly 'income' to be treated under Part IV of the Act, being of the nature of compensation or of political subsidy; but I am inclined to regard the ordinary cash allowances, whether on account of service still exacted, or of that with the performance of which Government has thought fit to dispense, as included in the terms of Part I. In the one case it is payment for services rendered in respect of an office or employment of profit, and in the second, it is of the nature of a hereditary pension for services formerly performed.

"3. When I was in Surat, Ráo Sáheb Anuprám explained to me in detail the case he referred to in his letter of the 8th May, printed in the preamble of Resolution No. 1846, dated 26th June. I am of opinion that as these cash allowances are sometimes sub-divided minutely amongst the recipients often only distantly connected with each other in ordinary life, it would be better for Government to tax the item in the lump, as paid to the person whose name is on the list, and fix the rate of the tax irrespective of other income. The cases in which the 'proportionate' share of an assessee would bring his total income over Rs. 2,000 per annum, are not likely to be sufficiently numerous to compensate for the trouble of making inquiries or passing a general rule enjoining such investigation. If the allowance be rateable, the tax deducted will be distributed by the recipient over the total number of shares, as would be the case with the interest on Government securities."

(G. R. No. 3004, dated 30th September 1886.)

28. Whatever the origin may have been of the assignments of revenue, described as *amals*, held by the Pant Sachiv of Bhor, they are now cash allowances paid out of the general revenue. They are not payable out of the revenue of a particular district, nor do they constitute a charge which could

be enforced against the land in the districts in which they were originally collected. Under the circumstances they cannot be properly classed as 'revenue derived from land,' and are liable to income tax in accordance with the principle stated in paragraph 2 (II) of the letter from the Government of India, No. 881, dated 3rd March 1887. (G. I., F. & C., No. 4031, dated 21st August 1890; *vide* G. R. No. 3020, dated 9th September 1890.)

29. The following opinion of the Remembrancer of Legal Affairs, No. 535, dated 15th May 1895, was communicated to all income tax officers for information and guidance —

"In the case referred to in Government memorandum No. 352 of 31st January 1895 and in letter No. 4402, dated 21st November 1893, from the Collector of Surat to the Commissioner, N. D., a cash allowance of Rs. 331 in annual amount is entered in the joint names of two persons, one the Rája of Bánsda, who has other income in British India amounting to Rs. 2,000 per annum; the other, Gamalsing Kasrising, who has no other taxable income in British India.

"2. The question raised is whether, under Act II of 1886, the tax should be levied on the entire amount at 5 pies per rupee, or only on the amount of the Rája's share.

"3. Government Resolution No. 1649 of 10th June 1886 is referred to as deciding that a salary of less than Rs. 500 per annum is liable to income tax if the income of the recipient including that derived from other sources amounts to Rs. 500 or more.

"4. In Government Resolution No. 1619 of 10th June 1886, the Government of India decided on the question marked (*a*) in the preamble, that deductions may be made from a salary of less than Rs. 500 per annum, only if the Collector brings to the notice of the person paying it, the fact that the recipient has other sources of income, and in answer to the question marked (*d*) it was decided that in such case the salary would be liable under Part I, and as to the levy under Part I, reference is made to (*a*) of that paragraph.

"5. This answer, however, does not make it quite clear whether the other sources of income should be considered not only as rendering the salary liable, but also as rendering it liable to the rate of 5 pies, if the aggregate income exceeds Rs. 2,000.

"6. The Collector has assumed that the existence of such other sources of income would have this double effect, and that the rate would therefore in this instance be 5 pies and not 4 pies.

"7. This would appear to be consistent with the wording of column 2 of Part I of Schedule II, which refers to the *income* and not to the salary as deciding the rate of deduction.

"8. But it seems the main question is whether the whole cash allowance is liable to the tax, or only the share of the recipient whose aggregate income exceeds Rs. 500 per annum.

"9. Government Resolution No. 3004 of 30th September 1886 is referred to by the Collector as having approved the proposal to tax a cash allowance on the lump, and not proportionately on each recipient.

"10. But that proposal apparently referred to cases in which only one person's name is entered in the list.

"11. It is submitted that where a cash allowance is entered in the name of an individual, who assumes the control and responsibility for the distribution thereof, the whole amount is fairly taxable as constituting one income, although there may be sub-shares; but that if there are other sharers admittedly possessing independent rights, it is inequitable to make any of them liable to the tax whose share is below the mini-

mum taxable, on the ground that the aggregate payable exceeds that minimum.

"12. A taxable amount must form the income or part of the income of the person taxed, and it is submitted if the sharers are not persons from whom the head sharer can withdraw any part of the payment, their shares must, for the purposes of the Act, be separately considered.

"13. Of course, if the entire cash allowance belongs to one of the payees, and the names of the others are merely entered to suit his convenience as to distribution *voluntarily* made on his part, the whole cash allowance is still one income, however it may be distributed.

"14. But if the sharers have independent rights which they could enforce against each other, it would seem inequitable to treat the entire amount as one income.

"15. It is not stated whether the Rája of Báneda claims the entire allowance as exclusively his own, the other sharer being merely *his* payee, or whether the two sharers have independent claims.

"16. If the Rája claims the whole as his, then only, it is submitted, should it be taxable as forming part of an entire income exceeding the minimum taxable."

(G. R., No. 2143 dated 26th June 1895.)

30. In their letter No. 810 of May 20th, paragraph 2 (*a*), printed in heading of Resolution No. 1649 of June 10th, the Government of India direct that the person paying the salary should not question the recipient as to his other income. He should deduct the tax solely with reference to the month's salary unless the Collector brings to his notice that the recipient has other income. Under this direction it is more convenient, and it is admissible under an opinion given by the Honourable the Advocate General, to deal separately under Part I with a salary paid to one member of an undivided family, regarding the salary as paid to an individual, though that individual is a member of a Hindu undivided family. The salaries of individuals who are members of undivided families will thus not be taken into consideration in estimating the amount of the income of the undivided family which will be taxable under Part IV. The salary by itself may not be taxable under Part I, but if the Collector brings to notice that the recipient has other income which makes the salary taxable (Section 5 *j*), *viz.*, his proportionate share of the income of the undivided family of which he is a member, the person paying the salary will tax it under Part I.

It has been ruled in Government Resolution No. 1369, dated 14th ultimo, that cash allowances are assessable under Part IV of Schedule 2 of the Act, and if the cash allowance is shared by A, B and C, being members of a *divided* Hindu family, each of them will be assessed on his actual income under Part IV, including his share of the cash allowance.

(G. R., No. 1846, dated 26th June 1886.)

31. The salaries of members of an undivided Hindu family who are Government servants should be treated separately in fixing the liability to and rate of assessment. (G. R. No. 2175, dated 24th July 1886.)

32. One member of an undivided Hindu family cannot be legally held liable for the income tax due by the family. There would be no legal objection, however, to attaching the responsibility for the whole of the tax payable by a family, by agreement of its members, to any one member who can most conveniently discharge it. But it must be understood that, in the event of default, the family and not the individual would be liable for the arrears. (L. R. No. 885, dated 15th July 1886 ; *vide* G. R. No. 2191, dated 26th idem.)

33. In the case in which two members of an undivided family, which has no other income, receive each a salary of Rs. 25, the salary of each member should be treated separately for assessment purposes by the disbursing officer. (G. R. No. 2398, dated 10th August 1886.)

34. Under the orders contained in Government Resolution No. 1846, dated 26th June 1886, the salaries of individual members of a Hindu undivided family should be treated separately and not lumped together in fixing the liability to assessment. (G. R. No. 2782, dated 11th September 1886.)

35. Government Resolutions Nos. 2782, dated 11th September 1886, and 1846, dated 26th June 1886, apply to salaries paid from Government treasuries as well as to those paid by private individuals. (G. R. No. 3575, dated 16th October 1895.)

36. It would be a difficult task to define the term 'Hindu.' But there is good authority for saying that that term has always been held to include Jains (Bom. H. C. R., V, 185, O. C. J.). Much learned research has been brought to this question by Sir M. Westropp, Chief Justice, in his judgment in the case reported at Bom. H. C. R., X, 241—267, in which he has called Jains 'Hindu dissenters.' In that same judgment the learned Chief Justice said that the term 'Hindu,' when used in enactments, 'has always been largely and liberally construed,' and remarked that even Sikhs had been held to be included in it.

From the above authorities it is safe to conclude that heterodoxy from the ordinary Hindu doctrines, however wide, does not disqualify a person from being considered to be a Hindu ; but if any doubt as to the interpretation of the word arises in practice, it had best be considered with reference to individual cases. (L. R. No. 1171, dated 7th September 1886 ; *vide* G. R. No. 2854, dated 20th idem.)

37. The sum of the salaries paid to the individual members of a joint Hindu family does not constitute a salary within the meaning of Part I, clause (*j*), of the second schedule of the Income Tax Act. (Advocate General and Standing Counsel, Calcutta, dated 6th January 1887 ; *vide* G. I., F. & C., No. 377, dated 26th idem, and G. R. No. 524, dated 12th February 1887.)

38. Section 3, clause (7), of Act II of 1886 enacts that in that Act the word 'person' 'includes a firm and a Hindu undivided family.' This definition of the word is not exhaustive. It does not say the word 'means' so and so, thus excluding the possibility of its meaning something more besides. This special definition of the word 'person' does not therefore exclude the general definition of the same word given in Section 2, clause (3), of the General Clauses Act (I of) 1868, but must be read as an addition to it, so that in Act II of 1886 the word 'person' includes a 'company or association or body of individuals, whether incorporated or not' and also 'a firm and a Hindu undivided family.' Both definitions are subject to the proviso that there be nothing repugnant thereto in the subject or context, but in Section 5, clause (*j*), of Act II of 1886, where the use of the word 'person' is in question, no such repugnance appears. (L. R. No. 468, dated 22nd April 1887; *vide* G. R. No. 1284, dated 20th May 1887.)

39. The following cases in which doubt had arisen regarding assessment under Act II of 1886 being submitted by Mr. J. A. Baines, C. S., on special duty for the purposes of the Income Tax Act, in his letter No. 45, dated 23rd July 1886, for the decision of Government it was ruled (1) that the salary and allowances of the Medical officers referred to in paragraph 2 (*a*) would apparently be taxable under Part I of Schedule 2 of the Act and that the former of the two courses suggested by Mr. Baines regarding the adjustment of the tax on allowances should be followed; (2) that the expenses of the school specified in paragraph 2 (*b*) should be deducted in determining the net assessable income of the school, and (3) that any moneys received and spent in British India by or on behalf of the minor are income taxable under Part IV.

"2. (*a*) A Covenanted Medical Officer draws monthly the following:—

1. Salary from Government over Rs. 166-10-8.
2. Allowance for medical attendance from a Railway Company of Rs. 100.
3. Similar allowance from a Cantonment Fund (and in one instance, from a Municipality.)

He is thus an employé of three different bodies—Government, a Local Authority, and a private Company. On the other hand, as far as he is concerned, his emoluments from the two latter sources are income from his profession. He can thus be assessed either under his principal source of income, that is, his official salary, but the tax on the two other allowances deducted at time of payment and credited to their respective heads, with a note that the assessee is registered as a Government servant elsewhere, in order to avoid his appearance thrice amongst the tax-payers, or he may be taxed under Part IV in consideration of the allowances being professional earnings, and the amount deducted (similar provision against double entries being made to those above mentioned), and the sum taken in one instalment, leaving the question of adjustment in case of transfer before the end of the year of assessment to private arrangement. As I notice that the officials of the department in question are subject to frequent moves, I think the former plan would be the preferable one. I

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understand from the reference that the allowances are all drawn on separate bills at different times and places.

(*b*) A private school maintains itself out of fees and a grant-in-aid. Its expenses consist of rent, repair of furniture and the supply of stationery and other materials. In estimating the net profit, I think that all these items might be deducted. (Resolution 1796.)

(*c*) A minor, brother of a Chief, resides in British territory for the purposes of education, his expenses being paid by cheques on the Bank of Bombay, drawn as required to meet them, by the Political officer in charge of the State. (2) He is taught by a tutor, on a salary of taxable amount. (3) His studies, &c., are supervised by a Government official, who receives therefor an allowance in excess of the taxable minimum. I think both the latter allowances are taxable since the remuneration is drawn periodically in British India. As to the first, I am of opinion that it should not be considered income, as it seems to be payment of expenses already incurred, apart from the possibility of the deposit at the Bank having been taxed independently."

(G. R. No. 2309, dated 4th August 1886.)

40. Income tax should be levied on interest on Government securities paid at a Political treasury outside of British India to any one. As to the question whether in the case of a subject of a Native State, who draws interest on Government securities to an amount of less than Rs. 500 a year and has no other taxable income although he may possess a large income in the Native State, the production of a certificate from the Political Agent (in the absence of a Collector) should be required, the deduction being made at five pies in the rupee in case the certificate is not produced; it has been decided that it is not desirable to invest Political officers with the power of Collectors for the purpose of granting certificates, and it will, therefore, be necessary for the Treasury officer in the absence of a certificate to make the deduction at the rate of five pies in the rupee whatever be the amount of interest paid. (G. I., F. & C., No. 3876, dated 25th October 1886; *vide* G. R. No. 3401, dated 9th November 1886.)

41. It does not appear that cash received for land or anything else can be held to be income, when the trader's "income" is not the cash received by him, but the profits made thereon. So also a sale of land is a transfer of capital and the proceeds of such sales are nothing but the realized capital. The profits, however, of a person whose business is to speculate in land should be assessed in the usual way. (G. R. No. 3604, dated 27th November 1886.)

42. In the case of a person who has a source of income exceeding Rs. 2,000 not known to be taxable at the time when the list under Section 16 of the Income Tax Act was prepared, and consequently not included in that list, there is no objection to issuing to him a subsequent notice under Section 17.

There is nothing in the Act to indicate that when the Collector has once assessed a person's income he is precluded from making a further assessment if he

discover other sources of income previously overlooked. Section 14 says, 'The Collector shall from time to time determine * * * * * * the amount at which every person so chargeable shall be assessed.' And Section 50 provides that all powers conferred by the Act may be exercised from time to time as occasion requires.

These two sections show that a notice under Section 17 may be issued to any person as often as occasion requires or whenever a source of income not previously taxed is discovered. In the English Taxes Management Act, 1880, special provision is made for subsequent assessments when omissions are discovered in the first assessment and, though the Indian Income Tax Act is not explicit, they seem allowable under it for the reasons above stated. (L. R. No. 710, dated 27th May 1882 ; *vide* G. R. No. 1443, dated 7th June 1887.)

43. The interest paid to Guaranteed Railway Companies' shareholders in India is liable to income tax as being the income of the person receiving it and is taxable under Part IV of Schedule II. The tax due thereon cannot be legally recovered by deduction from the lump sum paid by the Accountant General to the Agent to the Railway Company, but must be recovered from each shareholder in ordinary course of assessment under Part IV. (G. I., F. & C., No. 3284, dated 22nd June 1887 ; *vide* G. R. No. 1792, dated 13th July 1887.)

44. Under the provisions of Act II of 1886, the tax due by Railway Companies under that Act should be realized by the Collector. It has, however, been arranged with the G. I. P. Railway Company and the B. B. & C. I. Railway Company, for the convenience of both parties, that the tax due by those Companies shall be realized by the Public Works Department when paying over the surplus profits to the Companies. The Collector, therefore, need take no steps to assess or realize the tax from these Companies. The Accountant General, Public Works Department, will furnish the Collector with particulars of tax realized from each Company and will pass on the credit to the Civil Accountant General concerned. The amounts will be credited in the accounts and included in the returns in the same manner as if the tax had been realized by the Collector. (G. I., F. & C., No. 520, dated 2nd February 1887; *vide* G. R. No. 540, dated 15th idem.)

45. The Civil Accountant General, Bombay, is charged with the duty of realizing the tax on the share of the G. I. P. and B. B. & C. I. Railway Companies' surplus profits, the net balance being paid over to each Company. The amount of income tax to be recovered should be distinctly stated in the Government Resolution authorizing the payment of the surplus profits.

The Civil Accountant General is also responsible for furnishing any necessary returns in connection with the recovery of this tax to the local Income Tax authorities.

The same procedure should be adopted in the case of the East Indian Railway. The Public Works Department will, in the letter to the Comptroller General authorizing the payment of surplus profits to the Railway Company, state the amount of income tax to be deducted. The Comptroller, Indian Treasuries, will realize the tax at the time of payment of surplus profits, paying the balance only to the Company, but will charge the full amount to the Public Works Department.

(G. I., F. & C., No. 5879, dated 3rd November 1887; *vide* G. R. No. 3195, dated 26th idem.)

46. Proceedings for the recovery of the sum payable do not include the issue of notice under Section 17 of the Income Tax Act. Had it been the intention of the Legislature to limit the period within which the issue of notice under Section 17 was to take place, and to provide no further limitation in regard to subsequent procedure, the intention would doubtless have been expressed unambiguously by prescribing in that section the latest date for the issue of such notice. Such, however, is not the case. The limitation to the commencement of proceedings for recovery is contained in Section 30, which is devoted to the procedure to be followed in case of default of payment. Clause 2 of that section expressly provides that under certain circumstances the tax shall not be recoverable for a certain period, and it can hardly be contended that proceedings for recovery may lawfully commence before the tax is recoverable. (L. R. No. 1587, dated 16th December 1887; *vide* G. R. No. 3525, dated 30th idem.)

47. The proceedings for the recovery of any sum payable under the Income Tax Act referred to in clause (5) of Section 30 of the Act are those prescribed in the preceding clauses of the section. (G. R. No. 220, dated 18th January 1889.)

48. As the Collector of Income Tax for the Presidency Town is not a Collector within the meaning of the definition of that word given in Section 2 (2) of the Revenue Recovery Act (I of) 1890, he is not competent either to send to Collectors of districts or to receive from them for execution certificates under Section 3 of that Act.

The definition of 'Collector' in the above Act could only be amended by the Governor General in Council and by legislation, and as Section 30 of the Income Tax Act (Act II of 1886) already provides a special procedure for the recovery of arrears of income tax elsewhere than in the place of assessment, it is unlikely that the Government of India would consent to such legislation.

(L. R. No. 444, dated 21st March 1892; *vide* G. R. No. 1578, dated 6th April 1892.)

49. An order under Sub-section 1 of Section 30 of the Income Tax Act should be in the following form:—

'Whereas A. B. of has made default in payment of the sum of Rs. due by him on the of 189 on account of Income Tax for , I, C. D., Collector of , do hereby direct, under Sub-section (1) of Section 30 of Act II of 1886, that a sum of Rs. be recovered from the said defaulter. Dated at , this day of 189 .

(Signed) C. D.,
Collector of ,

(G. R. No. 1578, dated 6th April 1892.)

50. In the first of the following two cases the salaries must be treated separately, and C taxed at 5 pies, B at 4 pies and A exempted, as they are not Hindus, and the joint property system of any other law is not within the wording of the Income Tax Act. In the second case if the brothers do not constitute a 'firm,' they are not jointly assessable:—

1. *A* is a member of a Pársi or Mahomedan family. He has two sons named *B* and *C*. They all live together in one house. *A* is a clerk in a Government office and draws Rs. 40 a month. His sons *B* and *C* are also in Government service and draw Rs. 150 and Rs. 200 a month, respectively.

2. There is another family of two brothers named *D* and *E* who also live together. *D* is a cloth merchant and earns about Rs. 400 a year, and *E* is a fruit seller and earns Rs. 300 a year.

(G. R. No. 2352, dated 6th August 1887.)

51. The following opinion expressed by Mr. J. A. Baines, C.S., on special duty for purposes of the Income Tax Act, in his letter No. 255, dated 1st October 1887, on the questions noted in the margin was approved by Government and ordered to be acted on :—

1. Whether a company with which a commutation for income tax has been made can have the interest on Government securities held by it exempted from income tax or whether the tax is to be deducted at the time of payment of interest and thereafter refunded by the Income Tax Collector at the place where the Company resides.

2. A company commutes its income tax for three years, and Government approves the commutation. Is it open to the Income Tax Collector to dispute the company's claims to refund the income tax on Government securities purchased by the company subsequent to the commencement of the period of three years?

"The Act allows but one cause of exemption in the case of interest on securities, so in the instance quoted the securities must be taxed. As, however, the amount for which the total tax has been commuted has probably included this in the estimated income, and that amount has been possibly paid before the interest was taxed, it seems equitable to allow a refund of the amount levied in excess of the sum settled in commutation.

"The second question, on the same grounds, can be answered in the negative. The company can invest its

earnings in securities as in any other form of income, and the return is only taxable at the rate already settled, whatever the amount, so long as the commutation runs."

(G. R. No. 2324, dated 15th October 1887.)

52. Part III of Schedule II of the Income Tax Act being limited to the interest on certain securities therein specified, if the loan of a Native State is guaranteed by the Government of India it can be included in this part. Otherwise the interest is miscellaneous income under Part IV and must be dealt with accordingly. (G. R. No. 3052, dated 10th November 1887.)

53. The following opinion of the Remembrancer of Legal Affairs, No. 145, dated 31st January 1888, was communicated to all Collectors of Income Tax and it was directed that the suggestion contained in paragraph 6 of it should be acted on:—

"The word Collector in Act II of 1886 is defined to mean in the case of a private individual the Collector (as defined) of the district or presidency town in which the person has his residence.

"2. In the present case Mr. R. is said to reside at Poona: and if so, the Collector in the Kolába District had no jurisdiction to assess him, and the revising officer (District Deputy Collector) was right in cancelling such assessment. Assessment under Part IV must be made by the Collector (*vide* Section 14), *i.e.*, the officer holding that position in the district of residence.

"3. The opinion expressed that Mr. R. was liable to an assessment at five pies in the rupee on his income under Part IV was, I think, *ultra vires* and erroneous. It appears, moreover, to have been quite irrelevant to the only question before the District Deputy Collector, *viz.*, whether the appellant had been rightly assessed in the Kolába Collectorate or not; and it in no way binds the Collector of Poona.

"4. I think therefore the papers should be sent to that officer, who will doubtless assess Mr. R. according to law.

"5. In arriving at this opinion I have assumed that he has no residence at Panvel, as in the 2nd paragraph of Mr. Baines' letter it is clearly stated that he resides in Poona. Under these circumstances I do not think that Section 47 is applicable, as it refers to the case of persons who have several places of residence, and under it no declaration can be made in regard to a person having only one place of residence.

"6. When calling for an opinion as to the legality or otherwise of an order I would suggest that a copy of it should always be sent. In the present case I am a little uncertain in what capacity or under what section the District Deputy Collector was acting, but I suppose probably under Section 25."

(G. R. No. 536, dated 22nd February 1888).

54. The income tax is ordinarily one specially easy to collect when assessments have been fixed, and on the other hand the failure to collect it promptly may perhaps result in its not being collected at all, owing to migration of the assessees. Collectors should therefore inquire very closely into each case in which the collection of the tax is delayed. (G. R. No. 1161, dated 20th March 1889.)

55. The Collector should not, except in clear cases of decrease of income admitting of no doubt whatever, enter an assessee below the figure at which he stood assessed in the *final demand* of the previous year, but should enter him at least at that figure and leave him, if he feels aggrieved, to appeal in due course to the Assistant or Deputy Collector. (G. L. to the Collector of Hyderabad, No. 1248, dated 10th April 1890.)

56. The following opinion of the Honourable the Advocate General, No. 30, dated 23rd April 1890, was communicated to all income tax officers for guidance:—

"As I understand, Mr. —'s income is mainly derived from his life interest under two trust deeds. His income from these sources amounts to Rs. *x*. Mr.— contends that he ought to be assessed on the whole of his net income including this Rs. *x*, and that as his net income is in some way reduced to Rs. *n*, he ought only to be assessed on Rs. *n*. The Collector desires to assess Mr. — separately on the Rs. *x*.

"If Mr. —'s statement of the facts is accurate, I think that his contention is right. The only section in Act II of 1886 under which a trustee can be assessed for income tax on the property held by him for his *cestui que trust* is Section 20 (taken from 5 and 6 Vic., C. 35, Section 40), and that only applies where the *cestui que trust* is an incapacitated person, such as a lunatic, infant or married woman. But I am not informed how Mr. — produces this minus income of Rs. *m*; and his statement on this point should be carefully tested."

(G. R. No. 1668, dated 17th May 1890.)

57. Honoraria paid to officers in Government employ are subjected to income tax under Part I, Schedule II, Income Tax Act, 1886, when the pay of the officer, together with the honorarium, exceeds Rs. 500. But when an honorarium is granted by Government to an officer lent to a Native State who receives his pay from that State and does not accordingly pay income tax, it is not correct to take his pay into account in determining whether his income exceeds Rs. 500. (G. R. No. 3461, dated 15th October 1890.)

58. The intention of the Income Tax Act, as shown by Sections 15 and 33 read together, is that

a man is *primâ facie* to be assumed to be earning in the year of assessment as much as he did in the previous year, but if he can subsequently show distinctly that specified causes have prevented him from earning this *a priori* assumed income, he is entitled to a refund of the difference between the amount of tax paid and that which he would have been assessed at if it had been possible to see into the future. (G. R. No. 447, dated 6th February 1891.)

59. Although the word "net" is not inserted in Part IV of the second schedule of Act II of 1886, or any of the sections relating to assessment under that part, it is net income that has to be assessed in the case of any business assessable under it, just as much as under Part II where the word is used. (G. I., F. & C., No. 5559, dated 29th November 1890; *vide* G. R. No. 3908, dated 10th November 1891.)

60. A question as to the interpretation of the provisions of Section 33 of Act II of 1886, raised in connection with an application for a refund of income tax paid by a person during the year 1890-91, was referred by the Government of the North-Western Provinces and Oudh for orders. It was stated that for the year 1890-91 the applicant had been assessed under Section 15 (1) of the Act on his actual income of the preceding year, 1889-90, but that for certain special reasons his income for the year 1890-91 had fallen considerably short of that of the previous year. He therefore urged that, under Section 33 of the Act, he should be assessed to income tax on the reduced amount, and that the sum he had already paid in excess should be refunded. The Government of the North-Western Provinces and Oudh was of opinion that, under Section 15 (1) of the Act, the assessment for 1890-91 was made upon the income accruing to a person during the year ending on the 31st March 1890, so that the words 'loses the income on which the assessment was made' used in Section 33 would apply to the loss of the income of 1889-90, and that in the present instance Section 33 would only allow of a refund if the assessee had been deprived of or lost from any specific cause (such as a lawsuit for example) the income of 1889-90 on which the assessment was made. The Government of India considered that this opinion was based on a misconception as to the income on which the tax is leviable under the Act. Though it is no doubt provided in Section 15 that the *assessment* of the tax shall be made upon the income of the next preceding year, it seems clear to the Government of India that the tax is levied upon the income of the current year. It is true that there is no express provision to this effect in the Act, but on the other hand there is nothing in the Act inconsistent with this view, which not only appears to be natural and reasonable in itself, but is supported by the provi-

sions relating to the taxing of 'salaries and pensions' and 'interest on securities,' in which cases the tax is to be deducted from such 'salaries and pensions' and 'interest' at the time when the same is paid, that is, from the receipts under these heads during the current year. Moreover, if this construction were not correct, the Act would necessarily have been retrospective in its first year so far as the tax on 'incomes' was concerned, an effect which would be contrary to all principle.

In the opinion of the Government of India the object of Section 15, in requiring the assessment to be made upon the income of the preceding year, was simply to obviate the difficulty which would otherwise have arisen as to estimating at the beginning of the year what the income from certain fluctuating sources of income would be, and that this construction is correct would seem to be confirmed by clause (*c*) of Sub-section (2) of Section 16, which assumes that the person assessed must have a present accruing income in order to make him liable to assessment, a condition which would be meaningless if the tax was being levied in respect of the income of the previous year.

As regards the provisions of Section 33, the words 'the income on which the assessment was made' are not happily expressed, but if they are to be given any intelligible meaning they must be held to be intended to describe the income *on the basis* of which the assessment was calculated; for it is not understood how a man's death or insolvency or his ceasing to carry on a business during the year for which the assessment was made could possibly cause him to be deprived of or lose any income (*i.e.*, receipts) save those of that year (*i.e.*, the then current year). In the opinion of the Government of India, what the section obviously means is that, if for any legitimate cause the income of the past year upon which the assessment is based is not realized in the current year, the person taxed is entitled to have his assessment amended and to pay tax only on so much income as he has actually received.

(G. I., F. & C., No. 3531 S. R., dated 30th August 1892; *vide* G. R. No. 3747, dated 21st September 1892.)

61. An association which is merely constituted not for the making of profits but simply for the distribution among its members of their contributions is not a company carrying on *business*, which implies transactions with the outside public. It should not therefore be assessed to the income tax as a whole, but its members should be separately assessed. (L. R. No. 43, dated 9th January 1893; *vide* G. R. No. 370, dated 27th idem.)

62. Salary less than Rs. $\frac{500}{12}$ a month is liable to the income tax if the recipient has other income coming under Parts II, III or IV, which brings the

total income up to Rs. 500 or more. The person paying the salary should not, however, question the recipient as to his other income. He should deduct the tax solely with reference to the month's salary, unless the Collector brings to his notice that the recipient has other income.

A person, whose monthly salary is Rs. $\frac{500}{12}$ or more, but whose total income in the year from all sources is, owing to absence on leave, less than Rs. 500 for the year, is entitled to claim a refund, at the end of the year, of the amount of income tax deducted from his monthly salary, and obtain the refund; he should, after the close of the year, apply to the Collector, who if satisfied that the total annual income was under Rs. 500, should declare the applicant entitled to the refund, the amount then being paid like an ordinary refund. The Local Government may, if it considers necessary, prescribe a form on which the Collector's certificate can be given and the refund paid. In the case of Government servants, however, the Collector should enquire into the title to refund, and on his certifying to such title, the refund should be made by the officer through whom the tax was originally collected, and not as an ordinary refund.

If the salary drawn in any month is less than Rs. $\frac{500}{12}$, deduction need not be made on account of the tax on the ground that the salary of other months has been or will be such as to bring the salary of the year up to Rs. 500. The tax on salary should be deducted with reference to the salary of each month separately. These orders are intended to mean, that deduction of the tax is not to be made if the salary is less than Rs. 41-10-8 for each month separately. The pension or part of the pension of a previous year or month when drawn in arrear is not to be added to the current pension for estimating whether income tax should be paid thereon.

If a person receives salary less than Rs. $\frac{500}{12}$ a month, and also has other income less than Rs. 500 a year, but the salary and income together are Rs. 500 or upwards, the salary under Part I is liable to the tax, while the other income under Part IV is not liable.

(G. I., F. & C., Nos. 810, dated 20th May 1886, 1740, dated 3rd July 1886, 4420, dated 22nd August 1887, and 220-S. R. dated 17th January 1893; *vide* G. Rs. Nos. 1649, dated 10th June 1886, 2108, dated 19th July 1886, 2462, dated 8th September 1887, and 1485, dated 14th April 1893.)

63. Rewards to Government officers, whether in civil or military employment, for passing examinations are to be treated as taxable under Part IV of Schedule II of the Income Tax Act as income, not as salary under Part I of the schedule. The account officer auditing the payment of any such reward should inform the Collector of the fact of payment, in order that income tax may be levied

on it. (G. I., F. & C., No. 3716-S. R., dated 25th August 1893; *vide* G. R. No. 3175, dated 13th September 1893.)

64. The following correspondence shows that the owner of a house letting it on rent should, in estimating his income from the house for the purposes of Act II of 1886, be allowed to deduct from his rent the amount of any municipal or other tax payable by him as owner :—

"No. 1308 S. R., dated 13th March 1894.

"From—G. H. R. HART, Esq., Offg. Assistant Secretary to the Government of India, Finance and Commerce Department;

"To—The Solicitor to the Government of India.

"I am directed to forward copy of the papers noted in the margin, and to request that the joint opinion of the Honourable the Advocate-General and the Standing Counsel may be obtained on the question therein raised, whether the owner of a house letting it on rent should, in estimating his income from the house for the purposes of Act II of 1886, be allowed to deduct from his rent the amount of any municipal or other tax payable by him as owner.

From the Government of the Punjáb, No. 288, dated the 11th February 1893, and enclosures.
To the Government of the Punjáb, No. 3283-S. R., dated the 31st July 1893.
From the Government of the Punjáb, No. 2075, dated the 14th December 1893, and enclosures.

"2. The actual practice in this respect is not uniform throughout India but, as a general rule, no such deductions are allowed. It will be seen, however, from the papers herewith forwarded that the question was raised in 1890 by the Financial Commissioner, Punjáb, and referred to the Government Advocate, who held that income tax was not leviable on the portion actually paid by the owner as property tax to the Municipal Committee. Acting on this opinion, the Financial Commissioner deducts the amount of municipal tax when assessing house-owners' incomes: but the Government of the Punjáb takes a different view, and holds that there is no more reason to think that the owner is entitled to such a deduction than there would be to think that a person is entitled to deduct any other tax paid by him.

"3. The term 'income' is not exhaustively defined in Section 3, Sub-section 5, or elsewhere in Act II of 1886, and it is admitted that the tax-payer has accordingly a right to stand on the literal and ordinary construction of the word, and that the intention is to assess, under Section 14 of the Act, the net income of individuals to the same extent as under Section 11 of the Act the net incomes or profits of associations are assessed, that is, that in either case whatever expenses are actually and necessarily incurred in the process of obtaining or for the purpose of earning the gross annual income may properly be deducted therefrom in calculating the amount of income liable to assessment. There is thus no question as to whether the amount of the municipal house-tax, whether actually paid by the non-resident owner or by the occupying tenant, does or does not form a portion of the economic rent of the house; but the point at issue is, whether the payment is a necessary outgoing of the assessee's business as a landlord, incidental to and inseparable from his realisation of the rent.

"4. In support of the view of the Government Advocate and the practice followed by the Financial Commissioner of the Punjáb, it has been urged that, for the purpose

of calculating the amount of income derived from a house, a tax specially payable in respect of that house differs essentially from a general tax payable from whatever source the income may be derived; and that the amount so specially paid is no more a portion of the house-owner's assessable income than is the amount expended on repairs to the house, on account of which a deduction is invariably made from the gross rental before its assessment to income tax. It is further argued that, whether intercepted, as is ordinarily the case in England, before reaching the house-owner's hands, or handed over to the Municipality after reaching him, the municipal tax is actually and ultimately paid by the tenant, whose income, including the amount of the municipal tax, is separately assessed to income tax; so that if the amount of the municipal tax is not to be deducted from the assessable income of the house-owner, the latter will also pay income tax in respect of the same amount whenever municipal rates are paid by him, and not by the tenant, whence it follows that income tax will have been paid twice or once in respect of the same amount according as the municipal tax is actually paid by the owner or the occupier—a matter with which the Government, as receivers of the tax, are not concerned.

"5. On the other hand, in support of the view now put forward by the Government of the Punjáb, it is argued that the very fact that under Section 42 of Act XX of 1891 the municipal house-tax is assessed on the gross annual rent for which a house may be expected to let, shows that the tax is not paid in the process or for the purpose of actually obtaining the rent, notwithstanding the provisions of Section 62 under which the tax is remitted in case no rent has been obtained. From this point of view the contention is that the owner's income from the house consists of the amount paid to him or on his behalf by the tenant; that out of this amount the Municipality merely claims a portion for local purposes, just as Government claims another portion for Imperial purposes; and that there is no more reason for deducting the amount of the municipal tax than for deducting the amount of the income tax itself from the person's gross income in order to arrive at the amount assessable.

"6. It has further been suggested that a debt due to the Municipality can only come in after a debt due to the Crown; and that inasmuch as a tenant or an occupying owner of a house is not entitled to deduct the amount of any municipal or other taxes to which he may be liable when returning his income assessable with income tax, there is no reason why the owner of a house should be held entitled to do so without distinct statutory provision to that end. As the words of the law are admittedly doubtful, the reason of the thing and the analogy of a similar law seem to be fair grounds of argument; and it is pointed out that, according to the English law, it is only when an owner pays rates and taxes which are by law a charge upon the occupier that the amount of such rates and taxes is deducted from the annual value whereas, if a tenant pays rates and taxes which are by law a charge upon the owners when the annual value is to be the rent either actually paid or that might be obtained (as the case may be) *plus* the amount of such rates and taxes (Ellis Income Tax Acts, 2nd Edition, page 48). In the case under consideration the municipal house-tax is payable by the owner (Act XX of 1891, Section 63, Sub-section 1), and the recognition of any non-statutory deductions would obviously be dangerous and inconvenient, if not illegal.

"7. As, then, the matter is open to so much doubt, I am to request that the Honourable the Advocate General and the Standing Counsel may be instructed to advise the Government of India whether the deduction of municipal taxes from the rent received in the first instance given in the Deputy Commissioner of Simla's letter No. 199, dated 4th October

1893, was correct, and, if so, then whether the Governor General in Council has power, under Section 38, Sub-section 1, of Act II of 1886, to make a rule that municipal taxes should not in future be deducted from the amount of income assessable under Part IV of the Act, and generally upon the questions raised."

"No. 237, dated 17th March 1894.

"From—R. LEYCESTER UPTON, Esq., Solicitor to the Government of India;

"To—The Secretary to the Government of India, Finance and Commerce Department.

"Referring to your No. 1308 S. R, of the 13th instant, I have the honour to forward herewith a copy of the questions submitted to the Honourable the Advocate General and the Standing Counsel and their joint opinion thereon."

Question submitted to the Honourable the Advocate General and the Standing Counsel.

(1) Whether the owner of a house letting it on rent should, in estimating his income from the house for the purposes of Act II of 1886, be allowed to deduct from his rent the amount of any municipal or other tax payable by him as owner.

Joint Opinion of the Honourable the Advocate General and the Standing Counsel.

(1) Municipal taxes are generally levied upon owners of houses as a contribution in respect of the advantages afforded by the municipal arrangements in regard to health, comfort and security, and which advantages are assumed to benefit the owners of houses by attracting tenants and so enhancing rent. Theoretically it is this enhanced rent or a portion of it which is claimed by the Municipality as having been earned by means of the advantages afforded by it. In this view the tax is a payment for advantages which increase the rent and should not be treated as income. It is, in fact, a payment which contributes to produce the rent out of which it is paid, and the net income is the rent after deduction of the tax.

Taxes which are not levied in respect of the rent do not appear to stand on the same footing. They may be taxes which are levied on owners of property in common with those who do not own property, and be contributions for general purposes intended to promote the enjoyment of such income as is left to be expended at the pleasure of the citizens.

We are of opinion for the above reasons that such taxes as first above indicated should be deducted in assessing income tax under Act II of 1886.

Question submitted to the Honourable the Advocate General and the Standing Counsel.

(2) Whether the deduction of municipal taxes from the rent received in the first instance given in the Simla Deputy Commissioner's letter No. 199 of the 14th October 1893 (hereto annexed) was correct, and if so, then whether the Governor General in Council has power, under Section 38, Sub-section 1, of the above Act (II of 1886), to make a rule that municipal taxes should not, in future, be deducted from the amount of income assessable under Part IV of the Act, and generally upon the questions raised.

Joint Opinion of the Honourable the Advocate General and the Standing Counsel.

(2) Assuming the municipal taxes referred to to be within the description of taxes above indicated, and not taxes on servants, etc., the deduction is, in our opinion, correct. And the Governor General in Council has no power to make such a rule as suggested, as it would not, in our view, be consistent with the Act.

(G. I., F. & C., No. 1567-S. R., dated 27th March 1894; *vide* G. R. No. 1500, dated 27th April 1894.)

65. The legal opinion circulated with the foregoing order expressly referred to taxes payable by owners of houses in respect of the advantages afforded to the owner by the general municipal arrangements in regard to health, comfort and security, and neither the terms of the opinion nor the reasons of it are applicable to taxes paid by occupants in respect of specific services rendered to them. (G. I., F. & C., No. 3845-S. R., dated 30th July 1894; *vide* G. R. No. 2783, dated 28th August 1894.)

66. Income of European Circus Companies should be assessed when their accounts are finally closed, *viz.*, just before they leave the country; and the income of those which are Indian, but have no permanent residence or principal place of business in India, should be assessed at the place in which they are found at the beginning of the financial year when the assessments are made. (G. of I. letter No. 5801-S. R., dated 23rd November 1895; G. R. No. 85, dated 7th January 1896.)

PART IV.—PROFITS OF COMPANIES.

1. Under Section 11 of Act II of 1886, the principal officer of every company in British India has to prepare the statement of net profits of his company. As the principal officer of the B. B. & C. I. Railway Company resides in Bombay, that company will be taxed in Bombay and not elsewhere, and as it is to be taxed only on its net profits, buildings occupied by it for the prosecution of its business are not liable to taxation. (G. R. No. 1762, dated 21st June 1886.)

2. As the profits of companies are taxed under Part II, income forming part of such profits cannot be taxed over again as part of an aggregate income under Parts I, II and III. But such income can be taken into account in deciding whether a person's aggregate income is of such amount as to make his income under Part I taxable, though less than Rs. 500. (G. R. No. 1950, dated 8th July 1886.)

3. It is not intended to issue any general orders on the reference regarding the definition of 'net profits' for the purposes of Act II of 1886.

As regards the particular question whether certain percentages of net earnings set aside by some of the mills and factories in the Bombay Presidency to form a depreciation and renewal fund should be taken into account in ascertaining the assessable net profits, the Collector is not bound to accept, as a fair deduction, the amount set apart by the assessee, but should in assessing the net profits allow such deduction as he may think just and reasonable as representing the diminished value by reason of wear and tear during the year of any machinery or plant used for the purposes of a concern.

(G. I., F. & C., No. 399, dated 27th January 1887, *vide* G. R. No. 559, dated 19th February 1887.)

4. The following opinion, No. 1222, dated 21st September 1889, was recorded by the Remembrancer of Legal Affairs :—

"When once a Collector has, after inspection of the accounts produced by a company in answer to a notice under Section 12 (i) of the Income Tax Act (II of 1886), determined by an order in writing the amount at which that company shall be assessed under Part II of that Act, no revision of that order is legal except on the petition under Section 26 (? 27) of the person deeming himself aggrieved by that order. No one else can call the order in question. Subject to revision on such petition it determines the amount payable, and Section 28 contemplates that no evidence shall be taken even on such revision except at the instance of the petitioner or in order to ascertain the correctness of facts alleged by him.

"In the case referred to in the Government memorandum under reply, therefore, if Captain Lyde was a Collector within the meaning of Section 3 (9) of the Act, or was empowered under Section 40 to exercise and perform the powers and duties of a Collector conferred and imposed by Section 12, and has by an order, in writing, determined the amount at which the Perim Coal Company shall be assessed under Part

II, then no other officer can be appointed to revise the order.

"If Captain Lyde was not a Collector under Section 3 (9) or empowered under Section 40, his proceedings would be a nullity.

"If Captain Lyde has not made an order in writing in exercise of such powers, his proceedings are incomplete.

"In either of these two cases supposed in paras. 3 and 4, any person answering to the definition of a Collector contained in Section 3 (9), or empowered under Section 40, might proceed under Section 12 to inspect the accounts and make the order in writing.

"But no order in writing under Section 12 (2) by an officer empowered to make the same, would, in my opinion, be legally open to *revision* except on the petition of the person aggrieved by such order. The revision could, even in such case, be made by the Commissioner of Division only or by some person empowered by the Local Government to perform such duty and exercise such power.

"Even if Captain Lyde's proceedings were a nullity or uncompleted by an order in writing, Mr. Sandell could not inspect the company's books until he had been empowered under Section 40."

(G. R. No. 4047, dated 3rd October 1889.)

5. The net profits made by a company during a given year (Act II of 1886, Schedule II, Part II) are the excess of ordinary receipts during that year over expenses properly chargeable to the revenue of that year.

The preliminary expenses of a company which have not been incurred during the year of assessment, but previously, are not, for the purposes of the Act, properly chargeable to that year's revenue, and cannot be brought into account for the purpose of *pro tanto* reducing the amount of net profits.

(Adv. Gen., No. 50, dated 18th June 1890; *vide* G. R. No. 2257, dated 2nd July 1890.)

6. Section 3, clause (5), has no bearing upon the question what are the profits of a company liable to be taxed; but this section enables the Collector to assess the tax upon the shareholders of the company in respect of that portion of the profits of the company which the company may show were not made in British India, and consequently not liable to tax under the Act, but which the shareholders in British India received. Section 5 exempts from taxation any income which a person enjoys as a member of a company, when the company is liable to the tax. This is because of the provisions of Sections 11 and 12, under which the profits of a company are taxed before any distribution is made to the shareholders, but in those cases in which a shareholder in a company received in British India a share of the profits which are not liable to be taxed under Sections 11 and 12, he is liable to be taxed for that share as income received by him in British India.

A company, as such, can only be taxed upon the profits made in British India, even though the head office is in Bombay and the profits have been credited in such office, but that the individual share-

holders who received in British India from a company the profits made out of British India are liable to be taxed upon the profits so received as part of their income.

An individual or firm is liable upon his or its income and profits accruing and arising or received in British India, but each case must depend upon its own circumstances.

The Secretaries, Agents or other officers of the company are not personally liable for the tax assessed upon the company—there is nothing in the Act which imposes upon them any personal liabilities.

(Adv. Gen., No. 71, dated 30th July 1892; *vide* G. R. No. 3351, dated 20th August 1892.)

Act II of 1886, Sections 11 and 12, and Part 2 provide only for assessment and payment of tax upon the profits of a company made in British India. It does not matter where the head office is: if a company carries on business at different places, it is only liable to pay tax upon the profits earned in British India. It may be very difficult in the case of companies who carry on business in different places, some of which are out of British India, to ascertain what were the profits earned in British India, but each case must depend upon its own circumstances. In the case of the Siam Forest Company, Limited, the profits upon timber sold in Bombay or other places in British India, though consigned from Siam, must be considered as made in British India, and, therefore, liable to tax (see Sulley *vs.* The Attorney General, 5 H. and N., 511).

7. The Government of India in the Finance and Commerce Department, in their letter No. 5559, dated 29th November 1890, having made enquiries as to the practice followed in regard to the deductions allowed from the gross income or receipts of a company or other business carried on for the sake of profit, the Government of Bombay called for reports on the subject from the Commissioner in Sind, the Divisional Commissioners, the Political Resident, Aden, and the Collector of Income Tax, Bombay. A précis was prepared of the reports received, and copies of it were forwarded, with the remarks of Government, to the officers concerned, for information and guidance. The several points raised by the Government of India and the remarks of the Government of Bombay are given below:—

Para. of the Government of India's letter No. 822, dated 9th Nov. 1933.	Points raised by the Government of India.	Remarks by the Government of Bombay.
1	2	3
5	It is assumed that all expenses which are clearly necessary for the purposes of the business, that is, which are necessary in order to earn the profits which it is the object of the business to secure, are deducted. Such expenses vary with the nature of the business, but the following may be specified as examples:—Salaries of employés, Rent of buildings hired for the business, Cost of goods to be resold, and Interest on borrowed capital.	So far as regards companies' profits, which comes under Part II, Schedule II of the Act, the practice throughout the Presidency and at Aden appears to be fairly uniform, and in accordance with the instructions and limitations laid down, from time to time, by the Government of India. So far as individual traders in the Mofussil under Part IV are concerned, such deductions as are prescribed are made where it is possible to ascertain the amounts under the various heads. Where these are not, from various reasons, ascertainable, the practice appears to be to assess, with the aid of a Panchâyat, the gross profits and make a deduction on account of the various items referred to. This deduction varies according to local circumstances, but the system in practice works fairly, and an attempt to secure theoretical net profits would probably lead to friction, and possibly to fraud by the assessees without any corresponding benefit.
6 (*a*)	In what manner and under what limitations are the costs of repairs to buildings used for the business allowed to be deducted? Is the actual expenditure as a rule deducted? And, if so, are the statements of the assessees usually accepted as to the amount spent?	As regards companies there is no difficulty in ascertaining the cost of repairs and renewals, the actual expenditure being taken according to the statements of the assessees, but the Governor in Council has considered it to be advisable to lay this down as a general rule, subject to the proviso that it should not exceed 10 per cent. per annum on the valuation of the building. As regards individuals, the Governor in Council considers that the practice of accepting the statements of the assessees as proved by their accounts subject to the same proviso might be made general; and in the absence of accounts the estimate of a local Panchayát might be admitted, and orders to this effect will be issued to the officers concerned.
6 (*b*)	Renewal of buildings probably comes under the same treatment as repairs. But how is the line drawn between renewals and additions, which latter are properly additions to capital?	The cost of additions is usually charged to capital, and such charges are rightly disallowed. Renewals should be treated as repairs, the distinction between renewals and additions being ascertained by the description of the work as is done in Bombay City.
6 (*c*)	When amounts are shown in the accounts rendered to the Collector, not as spent on actual repairs and renewals, but as being taken to a renewal fund, are these amounts deducted with or without any limitations or conditions? And if such deductions have been allowed, are subsequent amounts actually expended on repairs or renewals admitted also? And, in such case, is any distinction made according to	*Vide* remarks against 6 (*d*) *infra*.

Para. of the Government of India's letter No. 5559, dated 29th Nov. 1890.	Points raised by the Government of India.	Remarks by the Government of Bombay.
1	2	3
	whether the amounts actually spent are charged against the income of the year or charged to the renewal fund?	
6 (*d*)	In what manner are deductions allowed on account of the depreciation in the value of buildings? Are any fixed percentages on account of depreciation accepted or do the Collectors try to estimate the amounts which they themselves think just and reasonable as representing the diminished value by reason of wear and tear during the year? And is any endeavour made to see that the deduction on account of depreciation represents the depreciation of one year only?	The Governor in Council considers that a company which has a depreciation and an insurance fund seems to have made necessary provision, not for adding to but for preserving its capital, and that where the depreciation and insurance capital are sufficient to provide for all risks, further additions should be assessed. If money was *honestly* set aside for depreciation or insurance, it should be deducted from net profits. Money paid for insurance is lost to the payer for the time at all events and perhaps for ever; but if the event insured against happens, *e.g.*, if his mill is burned down, his money returns to him, he suffers no loss, and the Government gets payment of its income tax for that year on the whole of its earnings, without any reduction on account of the loss of the mill. A question having been raised by this Government as to whether certain percentages of net earnings set aside by some of the mills and factories in this Presidency to form a depreciation and renewal fund should be taken into account in ascertaining the assessable net profits, the Government of India stated in their letter No. 339, dated 27th January 1887, that the Collector was not bound to accept as a fair deduction the amount set apart by the assessee, but should in assessing the net profits allow such deduction as he might think just and reasonable as representing the diminished value by reason of wear and tear during the year of any machinery or plant used for the purposes of a concern.
6 (*e*)	It is assumed that any amounts actually paid to insurance companies for insurance are deducted. If such payments are not made, but amounts are set aside and taken to an insurance fund of the concern, are such amounts deducted?	*Vide* remarks against 6 (*d*), *supra*.
7	In regard to machinery and plant, the same questions as those specified in regard to buildings arise; but it is possible that in some points it may have been found necessary to adopt a different practice for them, as the conditions are somewhat different, from buildings.	The Governor in Council considers that the practice prevalent in Bombay City as regards machinery and plant coming under Part II should be made of general application throughout the Presidency and Aden, and that as regards plant and machinery coming under Part IV, the existing practice in Dhárwár is fair and need not be disturbed.

Para. of the Government of India's letter No. 5559, dated 29th Nov. 1890.	Points raised by the Government of India.	Remarks by the Government of Bombay.
1	2	3
8	Are amounts taken to a reserve fund admitted as deductions in any province?	The Governor in Council is of opinion that the practice in Sind should be made to conform to that in the rest of the Presidency* and orders to this effect will be issued.
9	Are amounts spent in repayment of debt anywhere admitted?	The practice as regards companies under Part II varies, that in Sind and Aden varying from that in Bombay and elsewhere. The Governor in Council considers that it should be made uniform and the Bombay practice† generally adopted. The practice‡ for individuals coming under Part IV as exemplified in Kolába, Dhárwár and Belgaum is fair enough.
12	When houses are owned and used by the owner for letting in order to realize a profit from the rent, the case is merely a particular one of a business carried on for profit. But what deductions are allowed in such cases from the gross rents realized by the owner?	The practice seems to be fairly uniform. The attention of the Collector of Násik will be drawn to the Resolutions of this Government Nos. 964 and 1237, dated 3rd April and 3rd May 1886, respectively, so that the practice in the Municipal towns of that district of deducting municipal taxes from assessable income may be stopped.
13	When houses are occupied by the owner and not in any sense maintained for the purpose of realizing profits in the form of rent, Section 24 of the Act requires the Collector to estimate the gross annual rent at which the house may reasonably be expected to let, and to assess the income from it at $\frac{5}{6}$th of such amount. It is assumed that no other deduction than the $\frac{1}{6}$th fixed by the Act is allowed. But the Governor General in Council desires to know whether any difficulties have been found to arise in estimating the letting value, and in particular what treatment is adopted in places where it is the local custom to state the rent, not simply at the gross amount received by the landlord from the tenant, but at so much as rent proper and so much on account of municipal taxes or other payment which the landlord desires to transfer from himself to his tenant.	No difficulty has been found in estimating the letting value of houses occupied by the owners.
14	Is Section 24 of the Act applied in any province to companies or	The Government of India having admitted in paragraph 4 of their letter No. 5559, dated

* The practice in the Presidency proper is not to admit amounts taken to a reserve fund as deductions.

† The Bombay practice is not to admit as a charge amount borrowed as capital to start a concern with or for working expenses.

‡ The practice in Kolába, Dhárwár and Belgaum for individuals coming under Part IV is not to admit the amount spent in repayment of debt, but to admit the interest payable thereon.

Para. of the Government of India's letter No. 5559, dated 29th Nov. 1890.	Points raised by the Government of India.	Remarks by the Government of Bombay.
1	2	3
	to other concerns carried on for profit assessable under Part IV, when the business premises are owned by the company or trader?	29th November 1890, that it is net income that has to be assessed in the case of any business assessable under Part IV, just as much as under Part II, it appears that the rent valuation of shops occupied by the owners should not be assessed. The practice in the Sátára, Sholápur, Násik, Dhárwár and Belgaum Districts is contrary to the orders of the Government of India, and instructions will be issued to the Collectors concerned to alter the practice.

(G. R. No. 3908, dated 10th November 1891.)

8. The Income Tax Collector has not power, under Section 12 of the Income Tax Act, 1886, to require the production of the accounts of persons who have deposited monies at interest with a company, unless he has reason to believe that the statement of net profits delivered to him by such company under Section 11 is incorrect. He would not be justified in demanding such inspection merely for the purpose of satisfying himself that the deduction made by such company for interest was correct, unless he had reason to believe it was incorrect, nor for the purpose of finding out the names of the depositors. (Adv. Gen., No. 53, dated 13th May 1893; *vide* G. R. No. 2031, dated 5th June 1893.)

9. For ascertaining and determining income chargeable with income tax, the "general tax paid to the Bombay Municipality by the Cotton Mill Companies and other similar Joint Stock Companies on account of buildings they own should be deducted from the income of the companies as is done in the case of persons assessable under Part IV. (G. R. No. 1564, dated 6th April 1897.)

10. In assessing the profits of Cotton Mills Companies to income tax, amounts paid by them on account of Municipal halálkhor cess should not be deducted from the profits before charging income tax.

Sums annually set apart from the earnings by the proprietors of Cotton Mills and factories to form a Building Depreciation Fund should not be excluded from assessable profits. (G. R. No. 3396. dated 7th August 1897.)

11. In Government letter No. 3596 A, dated 17th August 1897, it was brought to the notice of the Government of India that it was the practice in the N. W. Provinces and Oudh to allow deductions on account of depreciation in the value of buildings in estimating the profits of Joint Stock

Companies for the purposes of assessment to income tax, and it was observed that no such deduction is allowed in the Bombay Presidency and that it is desirable to secure uniformity of practice as far as possible. The Government of India in reply stated that the practice followed by that Government had been to allow a certain discretion to Local Governments in prescribing in such matters the manner of ascertaining and determining the income liable to *assessment*, and that that practice should be maintained. They explained that it was not intended by the orders contained in their letter No. 399,* dated 27th January 1887, to prohibit deductions such as are made in the N. W. Provinces on account of depreciation of buildings. (G. of I. letter No. 4678-S. R., dated 27th October 1898; G. R. No. 5443, dated 28th November 1898.)

* Quoted in G. R. No. 559, dated 19th February 1887.

PART V.—RULES UNDER THE ACT.

1. The Governor in Council is pleased to direct, under Sub-section (4) of Section 30 of Act II of 1886, that the tax chargeable under the said Act shall be recovered in the City of Bombay from owners of vehicles and animals which ply for hire in the said City and are liable to a municipal tax, by the Municipal Commissioner for the said City, in the same manner as the said municipal tax is recovered from the said owners, with, and as an addition to, the said municipal tax. (G. R. No. 1004, dated 7th April 1886.)

2. In exercise of the power conferred by Sub-section (1), clauses (*a*) and (*b*), of Section 18 of Act II of 1886, the Governor in Council is pleased to make the following rules:—

1. In cases of any of the classes marginally noted, the Collector of Income Tax for Aden and Perim may:

Marchants.
Traders.

(*a*) include in a list under Section 16 of the said Act any person who is liable to be served with a notice under Section 17 thereof instead of or in addition to serving him with such a notice; and

(*b*) serve a notice under Section 17 of the said Act on any person liable to be included in a list under Section 16 thereof instead of or in addition to including him in such a list.

2. The said Collector may cause a general notice to be published in Aden or in Perim, or both in Aden and Perim, inviting every person chargeable with income tax under Part IV of the second schedule to the said Act to deliver, or cause to be delivered to the Collector within one week from the service of the notice, a return in in the form * hereto appended, a copy of which shall accompany the notice, of his income during the year ending on the day on which his accounts have been last made up, or if his accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment of the said tax is to be made, then of his income during the year ending on the said thirty-first day of March.

(G. R. No. 1352, dated 14th May 1886.)

3. In exercise of the powers conferred by Section 38 of Act II of 1886, the Governor General in Council is pleased to rule—

(1) Contributions made by the employés of the Bombay Port Trust to the Provident Fund established for their benefit, to whom clause (*g*) of Section 5 of Act II of 1886 does not apply,

* *Vide* Form 9 prescribed by G. N. No. 2321, dated 4th August 1886, as modified by G. N. No. 4480, dated 12th November 1889.

shall be exempt from liability to assessment under that Act on the same conditions and to the same extent as sums deducted from salary under the authority or with the permission of the Government are exempt under the said clause.

(2) The Provident Fund of the Bombay Port Trust shall be deemed to be a 'Service Fund' within the meaning of Rule 13* of the Notification of the Government of India in the Department of Finance and Commerce No. 593, dated the 5th February 1886.)

(G. I., F. & C., Notn. No. 1383, dated 14th June 1886; *vide* G. R. No. 1909, dated 2nd July 1886.)

4. In exercise of the powers conferred by Section 38 of Act II of 1886, the Governor General in Council is pleased to rule—

(1). Contributions made by the employés of the Karáchi Harbour Board to the Provident Fund established for their benefit to whom clause (*g*) of Section 5 of Act II of 1886 does not apply, shall be exempt from liability to assessment under that Act on the same conditions and to the same extent as sums deducted from salary under the authority or with the permission of the Government are exempt under the said clause.

(2). The Provident Fund of the Karáchi Harbour Board shall be deemed to be a 'Service Fund' within the meaning of Rule 13 of the Notification of the Government of India in the Department of Finance and Commerce No. 593, dated the 5th February 1886.

(G. I., F. & C., Notn. No. 1583, dated 25th March 1887; *vide* G. R. No. 1068, dated 25th April 1887.)

5. In exercise of the power conferred by Subsection (1) of Section 18 of Act II of 1886, the Governor in Council is pleased to make the following rules, *viz.*:—

1. Every Collector of Income Tax may serve a notice under Section 17 of the said Act on any person liable to be included in a list under Section 16 thereof, instead of including him in such list, if such person's liability to the tax has not become known to the Collector in sufficient time to include him in the list published under Section 16 in any year.

2. The Collector of Income Tax for Aden and Perim may, in any case in which it appears to him to be desirable so to do:

(*a*) include in a list under Section 16 of the said Act any merchant or trader who is liable to be served with a notice under Section 17

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* *Vide* clause 8 of G. I., F. & C., Notn. No. 2762, dated 6th June 1890. (G. N. No. 2022, dated 11th idem.) G. I., F. & C., Notn. No. 593, dated 5th February 1886, was superseded by G. I., F. & C., Notn. No. 2763, dated 6th June 1890. (G. N. No. 2022 idem.)

thereof, instead of or in addition to serving him with such a notice; and

(*b*) serve a notice under Section 17 of the said Act on any merchant or trader liable to be included in a list under Section 16 thereof, instead of or in addition to including him in such a list.

3. Any Collector of Income Tax other than the Collectors of Income Tax for the City of Bombay and for Aden and Perim may serve a notice under Section 17 of the said Act on any person liable to be included in a list under Section 16 thereof, instead of including him in such list, if, in the opinion of the Collector, the procedure under Section 17 is more suitable to the condition of such person than the procedure under Section 16 and shall serve such a notice on any such person instead of, or in addition to, including him in such a list in all cases where such person becomes liable to be included in such a list for the first time.

4. The Collector of Income Tax for any of the towns and cantonments* marginally noted may cause a general notice to be published, inviting every person chargeable under Part IV of the second schedule to the said Act to deliver or cause to be delivered to the Collector, within one week from the publication of the notice, a return, in the Form No. 9 hereto appended, which shall be published with the notice, of his income during the year ending on the day on which his accounts have been last made up.

* Town and Cantonment of Belgaum.
" " Karáchi.
" " Hyderabad.
" " Jacobabad.
Towns of Dhárwár, Hubli, Gadag Betgiri, Sukkur and Shikárpur.
† Cantonment of Deesa.

† *Vide* G. N. No. 1626, dated 29th June 1887.

Or, if his accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment is to be made, then of his income during the year ending on the said thirty-first day of March.

5. The Collector of Income Tax for the City of Bombay may cause a special notice to be served on any person residing in the said city whom he believes to be chargeable with tax under Part IV of the second schedule to the said Act, inviting such person to deliver or to cause to be delivered to the Collector, within one week from the service of the notice, a return, in the form K hereto appended, a copy of which shall accompany the notice, of his income during the year ending on the day on which his accounts have been last made up.

Or, if his accounts have not been made up within the year ending on the thirty-first day of March in the year immediately preceding that for which the assessment of the said tax is to be made, then of his income during the year ending on the said thirty-first day of March.

FORM No. 9 (*See rule 4.*)

Return under Section 18, Sub-section (1), Clause (b) of Act II of 1886.

District
Táluka } To be returned duly filled up on or before the day of 188 .
City

RECEIVED.
Date
Recorded No.
(Signed)
Registering Clerk.

Return of income under Part IV, Schedule II of Act II of 1886, accruing and arising in British India during the year ending on the day of 188 . The return of income under Parts I, II and III prescribed in the column of Remarks is required for information only.

Name.	Residence or place or places of business.	Sources of income under Parts I, II, III and IV specifying each part and each heading under each part separately.	Amount of income from each source, specifying the period during which the income from each has been derived.	Names of sharers, if any, in the income returned, with the specification of share of each.	REMARKS.
1	2	3	4	5	6
		1. Profession or Trade.	Rs.		1. State if agent, trustee, or executor, &c., for any one, and if so, for whom (*vide* para. 7 of instructions below).
		2. Interest on money (other than that invested in Government Securities, or Securities of local bodies and Companies).	Rs.		2. Here enter in detail the number and description of shares in Joint Stock Companies.
		3. Landed estate (other than Agricultural).	Rs.		3. State here the interest received during last year from Government Securities or Municipal, Port Trust or any other Debentures.
		(Give number and streets of houses.)			4. Here specify income under Part I. (If employed, state where employed.)
		Note.—If the returning party lives in his own house, he should enter the valuation thereof according to the municipal register.			5. Specify here any payments made to Insurance Companies, as instructed below.
					6. Any other remarks.

DECLARATION.—I, , do declare that the income stated in this return is truly estimated on all sources therein mentioned, that it has actually accrued within the period stated, and that I have no other source of income arising or accruing in British India assessable.

(Signed)

Address—

Date— 188 .

INSTRUCTIONS FOR FILLING UP THE RETURN.

1. In the case of a firm, the ordinary designation of the firm should be entered in Column 1.

2. If the person or firm has several places of residence or business they should all be entered in Column 2, the principal residence, &c., being specified.

3. In column 3 every separate source of income arising and accruing in British India should be entered in detail.

4. Against the gross receipts no deduction should be made on account of disbursements or expenses not wholly and exclusively incurred in respect of the profits returned; nor should deduction be made on account of the maintenance of the person himself or his family or domestic establishment, nor on account of any public or local rates, cesses or taxes, other than rates or taxes payable by such person as imposed by, or under any enactment or in force in a Municipality or Cantonment as such, in respect of his ownership of any buildings or lands not used for agricultural purposes, and otherwise than in consideration of services performed or accommodation supplied.

5. Sums paid to an Insurance Company in respect of an insurance or deferred annuity on the life of the person assessed, or on that of his wife, should not be deducted from the amount of income to be shown in Column 4, but should be specified in Column 6 (Remarks). On presentation by the assessee of the receipt of the Insurance Company for the payment and a copy thereof, a deduction, not exceeding one-sixth of the income of the assessee, will be allowed.

6. A deduction should, in the case of rent or income from house and lands not used for agricultural purposes, be made of the amount payable by the person in question on account of any tax or rate imposed by or under any enactment or rule in force in a Municipality or Cantonment as such in respect of his ownership of such buildings or lands, and not being a rate, cess or tax in consideration of services performed or accommodation supplied.

7. If the person filling in the return is chargeable (1) as a trustee, guardian, curator or committee of any infant, married woman subject to the law of England, lunatic or idiot; (2) as an agent of a non-resident; (3) as receiver or manager appointed by any Court in India, a Court of Wards, an Administrator General, or an Official Trustee in respect of income officially in his possession or under his control, the fact would be stated in the column of Remarks.

FORM K. (*See Rule 5.*)

FOR THE YEAR ENDING 31ST *March 188* .

Notice under Section 18, Clause (c) of the Income Tax, Act, 1886.

Number *Date*

To

You are requested duly to fill in, in accordance with the annexed instructions, sign and deliver at my office, the following Form of Return of Income chargeable under Part IV within seven days from the service of this notice. The return of income under Parts I, II and III prescribed in the column of Remarks is required for information only.

Income Tax Collector, Bombay.

Return of Income accruing and arising in British India.

Name.	Residence or place of business.	Sources of income under Parts I, II, III and IV specifying each part and each heading under each part separately.	Income derived from each of these sources during the past year, mentioning the period during which the income from each source has been derived.	Names of sharers, if any, in the income mentioned in column 4, with specification of their Shares.	REMARKS.
	2	3	4	5	6
		1. From Profession or Trade.	Rs.		1. Here state whether you are agent, trustee or executor, &c., for any one, and if so, for whom (*vide* para. 7 of instructions below).
		2. From Interest on money (other than that invested in Government Securities, Port Trust or Municipal Debentures, or in Joint Stock Companies).	Rs.		2. Here enter in detail the number and description of shares in Joint Stock Companies.
		3. Landed Estate. (*State below the number of each house and the street in which it is situated.*) *N.B.*—If you are living in your own house, it must also be entered here with its annual valuation as shown in the Municipal Books.	Rs.		3. If you possess Government Securities or Municipal, Port Trust, or any other Debentures, state here the interest received by you during the last year. 4. Here specify income under Part I. (If employed, state where employed). 5. Specify payments made to Insurance Companies (*vide* para. 5 of instructions below). 6. Any other remarks.

I, , do declare that the income stated in this return is truly estimated on all the sources therein mentioned, that it has actually accrued within the period therein stated, and that I have no other source of income.

(Signature of the Party making the Return.)

INSTRUCTIONS FOR THE GUIDANCE OF THE PARTY MAKING THE RETURN.

1. In the case of a firm, the ordinary designation of the firm should be entered in column 1.

2. If the person or firm making the returns has several places of residence or business they should be all mentioned in Column 2, the principal place of residence or business being specified.

3. In Columns 3 and 4 every separate source of income accruing and arising in British India should be entered in detail as therein required.

4. Against the gross receipts no deduction should be made on account of disbursements or expenses not wholly and exclusively incurred in respect of the profits returned; nor should deduction be made on account of the maintenance of the person himself or his family, or domestic establishment, nor on account of any public or local rates, cesses, or taxes, other than rates or taxes payable by such person as imposed by or under any enactment or rule in force in a Municipality or Cantonment as such in respect of his ownership of any build-